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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 282.

EDWIN A. MERRITT, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

JOSÉ MOLLER, CARSTEN SIERCK, JOHN MOLLER, PETER MOLLER, AND CARSTEN W. SIERCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 24, 1887.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea, which is in the said circuit court before you, between Jost Moller, Carsten Sierck, John Moller, Peter Moller, and Carsten W. Sierck, plaintiffs, and Edwin A. Merritt, defendant, a manifest error hath happened to the great damage of the said Edwin A. Merritt, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October (*Jan.*), eighteen hundred and eighty-seven, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 22d day of October, in the year of our Lord one thousand eight hundred and eighty-seven.

TIMOTHY GRIFFITH,
Clk.

The foregoing writ is hereby allowed.

WM. J. WALLACE.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to forty-six inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Edwin A. Merritt, plaintiff in error, against Jost Moller, Carsten Sierck, John Moller, Peter Moller, and Carsten W. Sierck, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-second day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Indorsed:) 7083. U. S. Supreme Court. Edwin A. Merritt, plaintiff in error, against Jost Moller et al., defendants in error. Writ of error.

Service of a copy of the within writ of error is hereby admitted, this 22d day of October, 1887. Jerome F. Manning, attorney for defendants in error. U. S. circuit court. Filed Oct. 22, 1887. Timothy Griffith, clerk.

3 Superior court of the city of New York.

JOSE MOLLER, CARSTEN SIERCK, JOHN MOLLER, Peter Moller, Carsten W. Sierck
against
EDWIN A. MERRITT, COLLECTOR OF THE PORT of New York, N. Y.
} Summons.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated June 29, 1881.

J. F. MANNING,
Plaintiff's Attorney.

(Office address, 54 Wall street, room 11.)

(Endorsed:) Moller & Sierck against Edwin A. Merritt. Summons. To the defendants: Notice is hereby given to you, that, on your default, judgment will be taken against you for the sum of $, with interest from the day of , 188 , and with the costs of this action. J. F. Manning, plaintiff's attorney. Filed, June 30, '81. E. A. Merritt, collector.

4 The President of the United States of America to the judges of the superior court of the city and county of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you, against Edwin A. Merritt, defendant, by Jost Moller, Carstan Sierck, John Moller, Peter Moller, Carstan W. Sierck, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 22nd day of July, 1881, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief-Justice of the Supreme Court of the United States, the 16th day of July, in the year one thousand eight hundred and eighty-one.

[L. S.]

JOSEPH M. DEUEL,
Clerk.

STEWART L. WOODFORD,
Defendant's Attorney.

(Endorsed:) 7083. U. S. circuit court. Jost Moller, Carstan Sierck,
John Moller, Peter Moller, and Carstan W. Sierck, versus Edwin
5 A. Merritt. Certiorari. Stewart L. Woodford, defendant's at-
torney. U. S. marshal's office, S. D. N. Y., received July 19, 1881.
I have this day personally served upon the clerk of the superior court of the city of New York a duplicate of the within writ, at the same time showing the original. Henry E. Knox, U. S. marshal. Dated July 21, 1881. U. S. circuit. Filed August 5, 1881. Joseph M. Deuel, clerk.

6 Circuit court of the United States for the southern district of New York.

MOLLER, SIERK & CO., PLAINTIFFS,
against
EDWIN A. MERRITT, DEFENDANT.
} Complaint.

Plaintiffs complain:

1st. That defendant was during the times hereafter named, collector of of customs of the United States at the port of New York.

2nd. That plaintiffs were, during said times, partners in trade under the firm name of Moller, Sierk & Co., and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3rd. The defendant, as such collector exacted from plaintiffs, as and for duties thereon, viz: at the rate of 2 cents and 2¼ cents per lbs. plus 25%.

4th. That by the laws of the United States, the true duty upon said goods was at the rate of 1¾ cents and 2 cents per lbs. plus 25%, but plaintiffs, in order to obtain said goods, were compelled to pay the defend-
ant, as such collector, the sum of forty-nine hundred and $\frac{41}{100}$ dol-
7 lars, in gold coin of the United States, in excess of the amount
required by law.

5th. That plaintiffs filed with said defendant due and timely protests in writing, upon each entry of said goods against his decision exactly such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

6th. The plaintiff made due and timely appeals, in each case, to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries, and as to the rest of said entries has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

7th. That the bill of particulars, hereto annexed, states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

8th. That said sum, so exacted, as aforesaid, has never been repaid to plaintiffs, and is still due and owing to them.

Wherefore, plaintiffs demand judgment against defendant for
8 forty-nine hundred and $\frac{41}{100}$ dollars in United States gold coin,

with interest on the several sums named in the bill of particulars, from the several dates of payment as appear thereby, together with costs and disbursements of this action.

J. F. MANNING,
Attorney for Plaintiffs.

(Endorsed:) 7083. United States circuit court. Moller, Sierk & Co., against Edwin A. Merritt. Complaint. Due service of a copy hereof is hereby acknowledged this 19th day of Aug., 1881. S. L. Woodford, U. S. Atty., atty. for deft. J. F. Manning, plffs. attorney, 54 Wall street, New York City.

9

Name of importer.	Description of merchandise.	Place whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.
Moller Sierck & Co	Sugar	Havana	Newport	Mch. 18, '81	March 23, '81
"	"	Cadmas	Giles Loring	" 1881	March 14, '81
"	"	Havana	Niagara	Apl. 23, '81	April 28, '81
"	"	Matanzas	Venerate	May 13, '81	May 31 '81

Name of importer.	Amount of excess claimed.	Date of payment.	Date of filing protest.	Date of appeal to Sec'y of Treasury.	Date of decision on appeal.
Moller Sierck & Co	$909.36	Mch. 23, '81	April 30, '81	April 30, '81	May 27, '81
"	$2,455.88	" 14, '81	April 25, '81	April 25, '81	May 27, '81
"	427.77	April 28, '81	May 27, '81	May 27, '81	July 18, '81
"	$1,107.40	May 31, '81	July 11, '81	July 11, '81	July 23, '81

10 Superior Court.

MOLLER, SIERCK & CO.
vs.
E. A. MERRITT.

NEW YORK, *July* 28, 1881.

SIR: Please take notice that the following or within is a bill of particulars of the plaintiff's demand in this action, which is brought to recover money erroneously and illegally exacted of and from the plaintiffs by the defendant, as collector of customs at the port of New York, as and for duties on merchandise imported in the vessels, and at the dates specified in said bill of particulars, to which add legal interest on the amounts from the dates of payment as aforesaid.

Yours, &c.,

J. F. MANNING,
Plaintiff's Attorney.

To S. L. WOODFORD, Esq.,
Defendant's Attorney.

(Endorsed:) 7083. Superior Court. Moller, Sierck & Co. vs. Edwin A. Merritt. Bill of particulars. J. F. Manning, attorney for plaintiffs. Due service of a copy of within bill of particulars and notice is hereby admitted. New York, August 19, 1991. S. L. Woodford,
11 U. S. atty., attorney for defendant. U. S. circuit court. Filed June
11, 1883. Timothy Griffith, Clerk.

12 United States circuit court, southern district of New York.

JOST MOLLER ET AL.
vs.
EDWIN A. MERRITT, COLLECTOR, ETC.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiffs in the above-entitled action:

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and, in such official capacity, received payment from the plaintiffs for and on account of duties due to the United States under the laws thereof, upon certain importations of merchandise imported by said plaintiffs into the port of New York from foreign countries.

II. He alleged that any and all moneys received by him from plaintiffs at the times in said complaint mentioned, were paid by said plaintiffs as a debt due by them to the United States, and not otherwise; and were received by defendant by virtue of his office as said collector and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith, thereafter and before the commencement of this action, or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys so re-
13 ceived from plaintiffs were the amounts due from them to the
United States, according to the rate of duty imposed by law upon the several articles of merchandise by them imported and assessed with duty and no other sums than duties regularly assessed, and ascertained, and liquidated according to law upon the plaintiff's import entry thereof, were collected or received by defendant from the plaintiffs.

III. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks and numbers and description there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandise was not dutiable according to the laws of the United States, at the rates specified in the complaint.

IV. And defendant, further answering, admits that plaintiffs filed with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiffs, conformable to the laws of the United States, and defendant leaves plaintiffs to make such proof thereof as they may be advised.

V. And as to any other allegations in said complaint contained not hereinbefore fully answered or admitted, defendant denies the same,
14 and each thereof, and leaves the plaintiffs to make such proof thereof
as they may be advised.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

(Endorsed:) 7083. U.S. circuit court, southern district of New York. Jost. Moller et al. vs. Edwin A. Merritt, collector, etc. Answer. Stewart

L. Woodford, United States attorney, attorney for defendant. Due service of a copy of the within answer is hereby admitted, New York, Sept. 30, 1881, J. F. Manning, plff's atty. U. S. circuit court, Sept. 3, 1881. Joseph M. Deuel, clerk.

15 United States circuit court, southern district of New York, in the second circuit.

MESSRS. ELMERHORST & CO., AND MESSRS. Moller, Sierk & Co., *vs.* THE COLLECTOR OF THE PORT OF NEW YORK, Edwin A. Merritt. } No. 7015, No. 7083, 2 actions.

It is hereby stipulated and agreed between the parties hereto, by their attorney, that the foregoing actions be discontinued, and that the amount due the plaintiffs be ascertained and certified at the New York custom-house, under the authority of a letter of the Secretary of the Treasury, dated March 14th, 1882.

J. F. MANNING,
Atty. for Plaintiffs.
S. L. WOODFORD,
U. S. Atty., and Atty. for Deft.

NEW YORK, March 29, 1882.

Ordered accordingly.

SAMUEL BLATCHFORD.

(Endorsed :) Nos. 7015, 7083. U. S. circuit court. Elmerhorst & Co., Moller, Sierk & Co. vs. E. A. Merritt. Stipulation for discontinuance. J. F. Manning, atty. for plaintiffs. U. S. circuit court. Filed March 29, 1882. Joseph M. Deuel, clerk.

16 United States circuit court, southern district of New York, in the second circuit.

MOLLER, SIERK & CO. *vs.* E. A. MERRITT. } No. 7083.

Motion to set aside stipulation of counsel and re-instate said cause as to the last two items in the bill of particulars on said docket.

And now come said plaintiffs, Moller & Sierk, by their attorney, J. F. Manning, esq., and ask said court to enter the following order in said cause, No. 7083, to wit: It is hereby ordered that the stipulation in said cause bearing date March 29th, 1882, and signed by J. F. Manning, esq., attorney for plaintiffs, and S. L. Woodford, U. S. attorney, for defendants, be annulled, vacated, and set aside, so far as the last two items in said bill of particulars are concerned; and that as to said two items in said bill, said cause be re-instated upon the docket of saidcourt, and to have the same legal status, and the same legal force and effect as if said stipulation had not been signed and made part of the record in said cause.

Signed June 11, 1883.

WM. J. WALLACE.

(Endorsed:) 7083. United States circuit court, southern dist. of New York. Moller, Sierk & Co. vs. E. A. Merritt. Order, U. S. circuit court, filed June 11, 1883. Timothy Griffith, clerk.

17 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Wednesday, the 8th day of December, in the year of our Lord one thousand eight hundred and eighty-six.

Present: The honorable Hoyt H. Wheeler, judge.

JOST MOLLET ET AL.
vs. } 7083.
EDWIN A. MERRITT.

Now come the plaintiffs, by J. F. Manning, esq., their attorney, and moves the trial of this cause; likewise comes the defendant, by Thomas Greenwood, esq., asst. U. S. attorney, his attorney. Thereupon a jury is empanelled, and the cause proceeds to trial.

After hearing the evidence of the parties and the argument of counsel, the court directs the jury to find a verdict for the plaintiffs. Thereupon the jury render a verdict whereby they find for the plaintiffs.

It is ordered that a certificate of probable cause be entered herein. It is further ordered that the defendant have a stay of proceedings on said verdict for sixty days from December 8, 1886, within which to 18 prepare and serve a case herein, with leave to turn the same into a bill of exceptions.

It is also further ordered that the defendant have leave to move for a new trial herein.

TIMOTHY GRIFFITH, *Clerk.*.

(See order amending minutes of the trial of this cause.)

19 U. S. circuit court.

JOST MOLLER ET AL.
against } N. S. 7083.
E. A. MERRITT.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Clarence S. Phillips, being duly sworn, says he is a clerk in the office of Stephen A. Walker, United States attorney, that on the 10th day of January, 1887, he served a copy of the defendant's notice of motion for a new trial in the above-entitled action upon Jerome F. Manning, esq., plaintiffs' attorney therein by depositing the same, properly inclosed in a wrapper stamped with the frank of the U. S. Department of Justice, in the general post-office of the city of New York, directed to him at 1424 New York avenue, Washington, D. C., as designated by him for that purpose.

And deponent further says he is over 18 years of age.

CLARENCE S. PHILLIPS.

Sworn to before me this 19th day of Jan'y, 1887.

THOS. GREENWOOD,
Notary Public, N. Y. County.

20 United States circuit court, southern district of New York.

JOST MOLLER ET AL.
vs.
EDWIN A. MERRITT.
} N. S. 7083.

SIR: You will please to take notice that upon the judge's minutes of trial, the custom-house papers, the pleadings, the bills of particulars, and other papers, and all proceedings had, in above-entitled action, the undersigned will make a motion before Hon. Hoyt H. Wheeler, at his chambers at Brattleboro, Vermont, on the 20th day of January, 1887, at 11 o'clock a. m., or as soon thereafter as counsel can be heard, for an order vacating and setting aside the verdict rendered in this action December 8, 1886, and granting a new trial, on the ground that said verdict was contrary to law, and for such other and further relief as to the court may seem meet and just.

Dated New York, January 7, 1887.

Yours, &c.,

STEPHEN A. WALKER,
U. S. Att'y and Att'y for Def't.

To JEROME F. MANNING, Esq.,
Plaintiff's Att'y, 1424 *New York avenue, Washington, D. C.*

21 Endorsed: N. S. 7083, U. S. circuit court, southern district of New York. Jost Moller et al. versus Edwin A. Merritt. Def't's notice of motion for new trial. Stephen A. Walker, United States attorney, attorney for defendant. To Jerome F. Manning, esq., att'y for pl'ffs., 1424 New York avenue, Washington, D. C. U. S. circuit court. Filed February 1, 1887. Timothy Griffith, clerk.

22 In the United States circuit court for the southern district of New York.

JOST MOLLER ET AL.
vs.
EDWIN A. MERRITT.
}

The defendant having moved, on notice, for an order vacating and setting aside the verdict rendered in this action and granting a new trial on the ground that said verdict was contrary to law, and counsel for respective parties having been heard thereon, it is ordered that said motion be, and the same is hereby, denied.

Dated Oct. 22nd, 1887.

WM. J. WALLACE.

We consent to the entry of the above order.

STEPHEN A. WALKER,
U. S. Att'y, & Att'y for Def't.
T. G.
JEROME F. MANNING,
Att'y for Pl'ffs.

23 In the United States circuit court for the southern district of New York.

JOST MOLLER ET AL.
vs. } No. 7083.
EDWIN A. MERRITT.

On reading and filing the annexed consent it is hereby ordered that the clerk's minutes of the trial of the above-entitled cause be amended by adding thereto the following:

"It is stipulated, in open court, by counsel for the respective parties hereto that the amount of the said verdict for the plaintiffs shall be adjusted at the custom-house under direction of the court.

Dated at New York, 22nd October, 1887.

WM. J. WALLACE,

We consent to the entry of the above order.

STEPHEN A. WALKER,
U. S. Att'y, & Att'y for D'ft.
T. G.
JEROME F. MANNING,
Att'y for Pl'ffs.

24 United States circuit court for the southern district of New York.

CUSTOM-HOUSE, NEW YORK,
Collector's Office, April 12, 1887.

J. MOLLER ET AL.
vs. } N. S. 7083. Verdict dated December 8, 1886.
E. A. MERRITT.

SIR: The adjustment in the above case is as follows:

Amount overpaid	$1, 525. 08
Interest added to Dec. 8, '86	507. 73
	$2, 032. 81

Respectfully,

JOSEPH TRELOAR,
S. Dep. Collector.

To the clerk of the United States court for the southern district of New York.

(Endorsed:) 7083. Dan'l Magone, collector, &c., for the district of New York, reports adjustment of case of Jost Moller et al. vs. A. E. Merritt. Received Apr. 13, 1887, U. S. attorney's office.

25 United States circuit court for the southern district of New York.

JOST. MOLLER & CO., & SIERCK ET AL.
co-partners,
vs.
EDWIN A. MERRITT, COLLECTOR.
} N. S. 7083.

It is hereby stipulated and agreed by and between the respective counsel in said cause that a judgment therein may be entered and filed nunc pro tunc as of October 4, 1887, in favor of the plaintiffs on the verdict therein.

JEROME F. MANNING,
Att'y for Plffs.
STEPHEN A. WALKER,
U. S. Att'y & Att'y for Def't.
T. G.

Ordered accordingly.

E. HENRY LACOMBE.

(Endorsed:) No. 7083. J. Moller et al. vs. E. A. Merritt. Stipulation for judgment. Filed in court Oct. 19, 1887. T.

26 In the United States court for the southern district of New York.

JOST. MOLLER ET AL., PLAINTIFFS,
vs.
EDWIN A. MERRITT, DEFENDANT.
} Judgment.

The issues in this action having been brought on for trial before Mr. Justice Wheeler and a jury, at a stated term of this court, held on the 8th day of December, 1886, and the issues having been tried, and a verdict for the plaintiffs having been duly rendered on the said 8th day of December, 1886, and their cost having been adjusted at forty-nine $\frac{45}{100}$ dollars:

Now, on motion of J. F. Manning, attorney, and Mr. Wm. J. Weldon, of counsel for said plaintiffs, it is adjudged that said plaintiffs recover of said defendants two thousand and thirty-two $\frac{81}{100}$ dollars, the amount of the verdict found by the jury as adjusted by agreement at the custom-house, with interest on said verdict from the said 8th day of December, 1886, and costs amounting to the sum of forty-nine $\frac{45}{100}$ dollars, said several sums amounting in the aggregate to the sum of two thousand and eighty-two $\frac{26}{100}$ dollars.

Judgment signed this 22nd day of October, 1887, nunc pro tunc as of October 4, 1887, as per order of court, filed October 19, 1887.

JOHN A. SHIELDS,
Deputy Clerk.

27 (Endorsed:) In the United States circuit court. Jost. Moller et al., vs. Edwin A. Merritt. No. 7083. Judgment roll. Jerome F. Manning, attorney for plaintiffs, William J. Weldon, of counsel for plffs., 160 Broadway, N. Y. Filed Oct. 22nd, 1887, nunc pro tunc as of October 4th, 1887, as per order of court.

28 United States circuit court, southern district of New York.

JOST MOLLER ET AL.
vs. } N. S. 7083.
EDWIN A. MERRITT.

Defendant's bill of exceptions.

And afterwards, to wit, at the October term, 1886, this cause came on to be tried before the honorable Hoyt H. Wheeler, district judge of the United States for the district of Vermont, who was assigned to hold this court, and a jury duly empanelled and sworn to try the issues herein, plaintiffs appearing by their counsel, Jerome F. Manning, esq., and by W. J. Weldon, esq., as their counsel, and the defendants appearing by their counsel, Stephen A. Walker, esq., U. S. attorney, and Thomas Greenwood, esq., assistant U. S. attorney.

The evidence showed that the plaintiffs imported from foreign countries certain sugars by the steamer Newport, March 23, 1881; by the steamer Giles Loring, March 14, 1881; by the steamer Niagara, April 28, 1881, and by the steamer Venerata, May 31, 1881.

That the defendant, as collector of the port, determined by
29 chemical tests, or by the polariscope, the grades or Dutch standards in color of these sugars, according to which sugars were dutiable under the provisions of law then in force, and exacted duty thereon according to such grades or Dutch standards so determined as aforesaid.

That against such classification and exaction the plaintiffs protested, claiming that such sugars should have been classified for duty as in their protest set out, appealed, and June 30th, 1881, brought this action to recover the duties claimed in said protests to have been illegally exacted, and on August 19th, 1881, served their complaint and bill of particulars, and the defendant on September 3, 1881, defendant served his answer.

That the duties in the case of the importation by the Newport were liquidated April 29, 1881; protest and appeal made April 30, 1881, and the decision of the Secretary affirming the collector's action May 27, 1881.

That in the case of the importation by the Giles Loring, liquidation of duties was made April 21, 1881, protest and appeal April 25, 1881, and the Secretary's decision affirming the collector's action May 22, 1881.

That in the case of the importation by the Niagara the liquidation of duties was made May 24, 1881, payment in part April 28, 1881, and in part June 2, 1881, protest and appeal May 27, 1881, and the Secretary's decision affirming the collector's action July 18, 1881.

That in the case of the importation by the Venerata liquidation of duties was made July 2, 1881, payment May 31, 1881, protest and appeal July 8, 1881, and the Secretary's decision affirming the collector's action July 23, 1881.

30 That subsequently, and in 1882, upon the authority of Welsh et al. vs. Merritt, 104 U. S. Reps., 694, and under the directions of the Secretary of the Treasury, issued by him March 14, 1882, S. S. 5151, a refund was made to the plaintiffs of the amount of excessive duty claimed by them to have been exacted in the case of their importations by the New-

port and the Giles Loring, but the collector declined to make refund of the excessive duties claimed by them in the case of their importations by the Niagara and the Venerata solely on the ground that this action as to the two importations by the Niagara and Venerata was prematurely brought.

Upon the trial no claim to recover duties was made upon the plaintiffs' importations by the Newport and Giles Loring and the importations by the Niagara and the Venerata were therefore the only importations that were the subject of the trial.

It was conceded by the defendant that if this action was commenced as to these two importations within the time prescribed by section 2931, U. S. Revised Statutes, then the plaintiffs were entitled under the decision of Welsh et al. v. Merritt aforesaid to recover the alleged excessive duties exacted in the case of the two importations by the Niagara and Venerata, but otherwise not.

It was agreed by the parties to this action that if the court should direct a verdict for the plaintiffs upon these two importations, or the jury should find a verdict for them thereon, then the amount only of such verdict should be adjusted at the custom-house.

31 Both sides having rested, the defendant, by his counsel, moved the court to direct the jury to find a verdict for the defendant as to the two importations by the Niagara and the Venerata on the grounds:

First. That plaintiffs had not proven facts sufficient to entitled them to recover.

Second. That they had not complied with the requirements of section 2931, U. S. Revised Statutes, in that this action was prematurely brought.

This motion the court denied, and to this ruling the defendant, by his counsel, excepted, which exception was duly noted and allowed.

The court then directed the jury to return a verdict for the plaintiffs.

32 Thereupon the counsel for the defendant excepted to the direction of a verdict for the plaintiffs, which exceptions was duly noted and allowed.

Under the said direction of the court the jury thereupon found a verdict for the plaintiffs, subject to adjustment at the custom-house, pursuant to the aforesaid stipulation.

And inasmuch as the aforesaid exceptions, matters, and things would not otherwise appear by the record, I have settled, allowed, and signed this bill of exceptions, and

It is ordered, that the same be filed as a part of the record nunc pro tunc with like force and effect as if the same had been reduced to writing and filed before the case was given to the jury.

Witness my hand, at the city of New York, this 21st day of April, 1887.

HOYT H. WHEELER.

We consent that the within bill of exceptions be signed and filed as the bill of exceptions in this case, Jost Moller et al., v. E. A. Merritt, N. S. 7083, subject to the approval of Mr. Justice Wheeler. 19 Ap'l, 1887.

WILLIAM J. WEEDEN,
Of Counsel for Plaintiffs.
STEPHEN A. WALKER,
U. S. Att'y, and Att'y for D'f't.
T. G.

33 (Indorsed:) N. S. 7083. U. S. circuit court, southern district of New York. Jost Moller et al. versus Edwin A. Merritt. Defendant's bill of exceptions. Stephen A. Walker, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. New York, 188 . , attorney for plaintiff. To , attorney for plaintiff. U. S. circuit court. Filed Ap'l 22, 1887.

TIMOTHY GRIFFITH,
Clerk.

34 United States circuit court, southern district of New York, October term, 1881.

JOST MOLLER ET AL.
vs.
EDWIN A. MERRITT.

WHEELER, J.

The plaintiffs made four importations of sugar at the port of New York, while the defendant was collector there, in 1881, on which he exacted duties, which they paid, but against which they duly protested and appealed. Two of the appeals were decided against them May 27th; the last payment was made June 2d; the summons in this action was served June 30th; one of the remaining appeals was decided against them July 18th, and the other July 23d. The complaint in this action, with a bill of particulars in due form covering all the importations, was served August 19th, and issue was joined upon the answer to this complaint, without objection to the time or manner of the commencement of the action. By the decision in Merritt vs. Welsh, 104 U. S., 694, the exaction of these duties was shown to be illegal, and those as to which decision was made May 27th were refunded; and the case has been tried as to those concerning which decisions were made July 18th and 23d. On the trial no question was made but that the exaction of the duties was illegal, nor about any of
35 the proceedings in any respect, except that a direction of a verdict for the defendant was requested on the ground that this suit was not commenced at a proper time. The court ruled against the defendant on this point and, as there was no other question about the right of the plaintiffs to recover, directed a verdict for them. The defendant has moved for a new trial on account of alleged error in this ruling, and this motion has now been heard. The only question now is whether the plaintiffs are defeated of their right to recover by bringing their action too soon. There are three sections of the Revised Statutes which appear to have some bearing upon this question: sections 2931, 3011, and 3012. Section 2931 provides that the decision of the collector as to the rate and amount of duties shall be final and conclusive, unless protest be made within ten days, and appeal to the Secretary of the Treasury be taken within thirty days, and that the decision of the Secretary shall be final unless suit be brought within ninety days after, and that no suit shall be maintained for the recovery of the duties until the decision of the Secretary, unless it is delayed more than ninety days.

Section 3011 gives an action to any person who shall have made pay-

ment under protest and in order to obtain possession of merchandise imported for him, to ascertain the validity of the demand, and to recover back any excess paid, but provides that no recovery shall be allowed in such action unless a protest and appeal shall have been taken as prescribed in section 2931. Section 3012 provides that no suit shall be maintained
36 for the recovery of duties unless the plaintiff serves a bill of particulars
within thirty days after notice of the appearance of the defendant. The restriction of recovery to cases in which a protest and appeal have been taken in section 3011 was passed in 1877, and is the latest of these enactments, 19 Stat. at Large, 247. The action given appears to be an action for the recovery of the money in which the principal question triable is the validity of the demand of the money made by the collector, about which the other provisions of these statutes appear to be regulations governing the action and conditions upon which it is given, compliance with which must be shown to entitle the plaintiff to recover; but which need not be alleged by the plaintiff in his pleading as a foundation for, or a part of, his cause of action to give him a right to show compliance with them, and the want of which need not be set up by the defendant in his pleading to give him the right to disprove such compliance. This is the effect given to statutes conferring a right of action, but limiting the right to maintain the action unless certain notices should be given. Kent v. Lincoln, 32 Vt., 291; Matthie v. Barton, 40 Vt., 286. Therefore, in States where the common-law method of pleading prevails the common counts in indebitatus assumpsit would seem to be a sufficient declaration, and the general issue a sufficient plea. Elliott v. Swartwout 10 Pet., 137. The money is what is recovered for, with interest from the time of its illegal exaction ordinarily. Erskine v. Van Arsdale, 15 Wall., 75; Red-
37 field v. Ystalyfera Iron Co., 110 U. S., 174. According to the provis-
ions of section 3011 the plaintiff might bring an appropriate action for the recovery of the money, and on showing that the defendant took his money for duties by illegal exaction, and protest and appeal as prescribed in section 2931 have a recovery. There is nothing there about a decision by the Secretary, and there is nothing about protest and appeal before the commencement of the suit. It is the recovery in the action, not its commencement, which is restrained by the want of these. Section 2931 does not provide that suits shall not be brought until decision by the Secretary, but that it shall not be maintained. The same expression is used in section 3012 whereby it is provided that no suit shall be maintained, unless a bill of particulars is filed, which is not to be done until after suit brought. This shows that prohibition of maintenance does not there prohibit commencement of suit. The impression made by the reading of these three sections and considering them together is that it was intended by them to give an action for the recovery of money illegally exacted for duties, but to restrain maintaining it to recovery of judgment, without protest, appeal, and adverse decision by the Secretary. Of course if there should be no protest and appeal in due time shown the decision of the collector would be final and conclusive as to the legality of the exaction, and if these should be shown and the suit should not be brought in time the decision
38 of the Secretary would be likewise final and conclusive, and the
plaintiff would have no ground for a recovery, whether the suit was

otherwise well brought or not, but that does not show that a suit brought before decision would be premature. This suit was not delayed more than ninety days after the decision of the Secretary, and as there is no question about the rest of the plaintiffs' case, would seem to be well brought if the question is not foreclosed by the expressions of the Supreme Court in Arnson v. Murphy, 109 U. S., 238, and 115 U. S., 579. The question in that suit about the time of bringing it was whether it was brought soon enough, not whether it was brought too soon, and what is said about the bringing of a suit being prohibited until after the decision by the Secretary appears to have been said with reference to the language of section 2931, in general, without reference to the language of that section in connection with that of sections 3011 and 3012 in particular. These expressions are so direct, however, that they may have been intended to indicate that this subject was considered in all its bearings and decided, although not involved in this aspect. But whether so or not those expressions are not considered to be decisive of this case against the plaintiffs.

The time when the complaint and bill of particulars in this action were served was after the decisions of the Secretary upon the appeals, and long before the expiration of ninety days after. The answer of the defendant was served September 3d, and more than forty days before the expiration
39 of ninety days after the first of these decisions. This complaint was the first pleading under the provisions of the code of precedure of the State in which the suit was brought. New York code of civil procedure Sec. 478. Until the complaint was filed there does not appear to have been anything on which any judgment could be rendered. Ibid. Secs. 419, 420. This suit was well brought as to the other entries in any view. There could be no advantage or benefit to the defendant or the Government in having two suits instead of one. The answer of the defendant was filed by the district attorney of the Government, who then knew from the bill of particulars, or is to be presumed to have known, that this suit was brought to recover these duties as well as the others. The objection that these causes of action are improperly united with the others could apparently have then been taken by the answer. Ibid. Sec. 488. Had it then been so taken the plaintiff could have brought a new suit within the required time. When it was taken this could not be done. The service of this complaint would seem to be sufficiently the commencement of this action for these causes of action for all the purposes for which a delay until the decision of the Secretary can be required. Certainly it does not appear to be just to allow this objection to be taken and prevail now unless the rules of law strictly require. It is a mere technicality which does not at all touch the merits of the plaintiffs' claim, which is confessedly just, for it is for the recovery of money which was confessedly
40 illegally exacted. It is true that the action is given only upon condition that it be brought within ninety days after decision of the Secretary. This action was not so brought as to include the items in question until after that decision, and it was so brought as to include them within the ninety days after. What was done about it before the decision did not subject the defendant or the Government to any additional costs, charges or expense. If the suit is overthrown on this ground, money illegally exacted of the plaintiffs will be left in the hands of the Govern-

ment; if it is sustained the plaintiffs will only recover that. The rules of law do not appear to stand in the way of doing justice by sustaining this recovery.

Motion denied.

Jerome F. Manning, for plaintiffs, William J. Weldon of counsel for plaintiffs.

Stephen A. Walker, U. S. attorney. Thomas Greenwood, assistant U. S. attorney, for defendant.

(Endorsed:) Circuit court of the United States for the southern district of New York. Jost Moller et al. v. Edwin A. Merritt. Decision, Wheeler, J. U. S. circuit court. Filed Feb. 1, 1887. Timothy Griffith, clerk.

41 Supreme Court of the United States. October Term, 1887.

EDWIN A. MERRITT, PLAINTIFF IN ERROR,
vs.
JOST MOLLER ET AL., DEFENDANTS IN ERROR.
} Assignment of Errors.

Afterwards, to wit, on the third Monday of October in the same Term before the Justices of the said Court at the Capitol in Washington, comes the said plaintiff in error by Stephen A. Walker (his) attorney and ssay that in the record and proceedings aforesaid there is manifest error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he, the said paintiff may be restored to all things which he has lost by occasion of said judgment, &c.

STEPHEN A. WALKER,
Attorney for Plaintiff in Error.

42 (Indorsed:) 7083. United States Supreme Court. Edwin A. Merritt, paintiff in error, vs. Jost Moller et al., defendant in error. Assignment of error. Stephen A. Walker, attorney for plaintiff in error. Due service of a copy of the within assignment of error is hereby admitted this 22d day of Ooctober, 1887. Jerome F. Manning, attorney for defendants in error. To J. F. Manning, attorney for , in error, U. S. circuit court filed Oct. 22d, 1887.

TIMOTHY GRIFFITH,
Clerk.

43 Supreme Court of the United States. October Term, 1887.

EDWIN A. MERRITT, PLANTIFF IN ERROR,
agst.
JOST MOLLER, CARSTEN SEIRCK, JOHN MOLLER, Peter Moller, Carsten W. Seirck defendants in error.
} Joinder in Error.

And afterwards, to wit, on the third Monday of October term, in said term, the said defendant in error by Jerome F. Manning, their attorney, and

William J. Weldon, their counsel, come here into Court and say that there is no error either in the record or proceedings aforesaid, or in giving of the judgment aforesaid.

And they pray that the said Supreme Court, before the Justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

JEROME F. MANNING,
Attorney.
WILLIAM J. WELDON,
Of Counsel for Defendants in Error.

44 (Indorsed:) United States Supreme Court. Edwin A. Merritt, plaintiff in error. Jost Moller et al., defendants in error. Joinder in error. Jerome F. Manning, att'y for deft. in error. Due service of a copy of the within joinder in error is hereby admitted this 22d day of October, 1887. Stephen A. Walker, att'y for plaintiff in error. U. S. circuit court. Filed Oct. 22, 1887.

TIMOTHY GRIFFITH,
Clerk.

45 UNITED STATES OF AMERICA, *ss:*

To Jost Moller, Carsten Sierck, John Moller, Peter Moller, and Carsten W. Sierck, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October term, eighteen hundred and eighty-seven, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Edwin A. Merritt is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated October 22, 1887.

WM. J. WALLACE.

46 (Indorsed:) 7083. U. S. Supreme Court. Edward A. Merritt, plaintiff in error, against Jost Moller et al., defendants in error. Citation. Service of a copy of the within citation is hereby admitted this 22nd day of October, 1887.

JEROME F. MANNING,
Attorney for Defendants in Error.

(Indorsed on cover:) No. 282. Edwin A. Merritt, late collector of the port of New York, plaintiff in error, vs. Jose Moller, Carsten Sierck, John Moller, Peter Moller, and Carsten W. Sierck. S. New York, C. C. U. S. Filed October 24, 1887.

THE PETITION OF RIGHT

OF

MORRIS S. MILLER,

A citizen of the State of New York and of the United States of America,

FOR

REDRESS

IN A CASE WHERE

ALFRED P. EDGERTON, JOHN H. OBERLY and CHARLES LYMAN, the Commissioners, and others, in pursuance of the Civil Service Act, approved January 16th, 1883, and under color of the provisions thereof, are trespassing upon the petitioner's civil and political rights or liberties by exercising illegal powers.

THE PETITION OF RIGHT

OF

MORRIS S. MILLER,

A Citizen of the State of New York and of the United States
of America.

To

THE SUPREME COURT OF THE DISTRICT OF COLUMBIA:

Morris S. Miller, the petitioner, in person, presents this his Petition of Right under the Constitution of the United States, and gives the Court to understand that he is one of the people, that he is a citizen of the State of New York and of the United States, and possessed of the rights, privileges. immunities and sovereignty of a citizen thereof, which are according to the common law, and secured by the Constitution and the laws of the land.

And he further saith, that by this ancient right of petition, he shows this Court, that he hath a grievance and an uncommon injury by reason of an infringement of his civil and political rights, where the law in its ordinary course is too defective to reach, and, therefore, avails himself of his right of petition to this Court for redress, which rights it is the duty of this Court to protect and his duty to defend.

That this petition of right is a Constitutional remedy devised to redress an injury by reason of an infringement of the unwritten rights of the people according to the common law, or the declarations and Acts of Parliament; or a trespass upon the Articles of the Constitution of the United States, where the grievance is of such a nature that the *individual* sustains no other injury and hath no other grievance than the trespass upon his rights, privileges immunities and the constitutional barriers to protect them—and in common with every *individual* in the Republic—which petition every individual hath the constitutional right to present to this Court.

That this is a petition in form, because of the respect due to the sovereignty lodged in this Court by the People, but in substance a demand for redress, which is the right of a citizen.

And he further saith, that the petition is addressed to this Court because the petition of right must be made to the sovereignty or power to give redress wherever it may be lodged—under the English Constitution, to the Crown and to Parliament which are sovereign; and under the Constitution of the United States, where the power or sovereignty is distributed and lodged by the people in the Executive, Legislative and Judicial Departments, the petition may be made either to the President, the Senate, House of Representatives or to the Supreme Court.

1. Because it is the duty of the Court to bring every law to the test of the Constitution.

2. Because it is the plan of the Constitution to restrain legislative power.

3. Because the Court, by virtue of its powers—constitu-

tional and statutory—hath the power to redress grievances of this nature.

And he further saith, that this ancient petition of right is of such dignity that it is entitled to be heard, considered and treated with profound reverence and respect, whether carried in the hands of a powerful citizen leading powerful parties over the beaten paths and broad avenues which lead to the portals of the White House, of the Senate or the House of Representatives, or borne in the hands of the humblest citizen of the Republic by hitherto untrodden paths, to demand admission at an hitherto unopened door of the Temple of Justice, where the sovereignty or political power to give redress is lodged by the people.

It is an historical and a free and existing right secured by the Constitution—the fourth subordinate right of the English people. The fifth is the right to bear arms to defend these rights, and the petition of right is the birthright of the citizens of the Republic as well as of the people of England.

This ancient right hath been bathed in blood; the logic of its denial is revolution and civil war; its denial cost Charles I. his head, and its denial was a grievance in the Declaration of Independence in 1776.

That this Court hath jurisdiction, because its judicial power extends to all cases in law and equity arising under the Constitution; that this Court succeeded to the judicial powers of the old National Council and Parliament of England to which the petitions of right were made as tribunals of justice or courts of law, rather than to Parliament as a legislative body, and that in all that concerns the petition of right this Court hath for its antecedents the ancient Court and Council of the king, the parent of the

House of Lords, and the Parliament of England. That these judicial powers of the English Parliament to hear a petition of right are inherited by this Court, and vested therein by the constitutional provisions creating the Court, and preserving the right of petition.

And he showeth by the highest authorities that:

> "By the Constitution of the United States supreme legislative, judicial and executive powers of the Government are distinct and independent; each is intrusted with a portion of the sovereign authority within the sphere of its prescribed duties and powers."
>
> *Tiffany's American Theory,* 62
> *Potter's Dwarris Stat. and Con.,* 333.

And also: "* * * * * * * * * * * * * *

> ,, The only question is as to the grievances to be redressed. * * * * * * * * * * * * * *
> That must always be determined by the power of the 'Government' to give the redress. The right is to petition the 'Government.' This means to address the petition to the appropriate department—to Congress, the Executive, or the Judiciary, according to their respective jurisdictions, as prescribed by the Constitution and laws."
>
> *Vide Paschal's An. Const.,* 256, *Sect.* 248.

The petitioner also presents herewith—forming a part of this petition demanding redress—an information in form, but in substance a petition of right, for a writ, in the nature of a *quo warranto,* of prohibition, mandamus or such other writ as the Court may direct; and this petition is based upon the facts set forth in the information showing that Alfred P. Edgerton, of the State of Indiana, John H. Oberly, of the State of Illinois, and Charles Lyman, of the State of Connecticut, are Commissioners, under and by virtue of the Act to regulate and improve the Civil Service of the United States, approved January 16th, 1883, appointed by the President by and with the advice and consent of the Senate.

The information is directed against individuals in possession of the office for usurping and exercising illegal powers, and not against the office, nor for a recovery of the possession thereof.

It is in form in the nature of an information for a writ in the nature of a *quo warranto*, because the proceeding and writ will give the petitioner a proper remedy if it cannot be smothered by the Executive Department; but the information is also in form as well as in substance a petition of right, and alleges that the Commissioners are enforcing and claiming the right to enforce all the powers of the Civil Service Act, and the rules made in pursuance thereof.

Your petitioner saith, however, that he demands a writ that will give him redress; that when your petitioner hath shown a grievance, and a case by this petition of right, that the Court will devise the writ, and that it will be his duty to act under the control and direction of the Court.

And your petitioner shows in this petition that he hath a grievance, because the Commissioners, under color of the said Act, and appointed thereunder, infringe upon his rights, privileges and immunities as a citizen according to the common law, secured by the Constitution of the United States, by enforcing and claiming the right to enforce the illegal provisions thereof, and the unconstitutional powers given by the Act, in the District of Columbia and elsewhere in the several States of the United States.

1. Because the powers exercised by the Commissioners, which are executive in their nature, are vested by the Constitution in the President or heads of the departments.

2. Because the Commissioners exercise discretionary powers in the nomination, and, in fact, control appointments to office in the Executive Department of the Government. Because the Commissioners, owing their subsistence in office to the Legislative Department, shift the powers lodged by the people in one Department to another, and confuse powers executive and legislative—which powers under the Constitution are distinct and separate. That the Commissioners thereby fetter the Executive Department, and limit the power of the people to put the public servants in and out of office by the election of a President.

3. Because the Commissioners infringe upon his rights, privileges and immunities by exercising the power and claiming the right to limit the qualifications of the petitioner and of citizens of the Republic to be nominated and appointed to office under the Government.

4. Because by and under color of the law they claim the right, and exercise the power, to issue Letters Patent to a limited number of citizens selected and registered by the Commissioners, giving this privileged class exclusive privileges of nomination to offices of honor and profit in the Executive Departments of the Government, distinguishing the said class from the mass of citizens who are excluded by the Commissioners and placed upon the same footing with persons disqualified by conviction for high crimes and

misdemeanors, whereas under the Constitution there is but one order—the order of citizens composed of the people.

5. Because the Commissioners exercise the power and claim the right to limit and qualify the civil rights of the citizen, who by virtue of his sovereignty can limit, qualify or abolish the powers of the Government, and hath not given the Legislative, Executive or Judicial Departments power to qualify his rights or limit that sovereignty which distinguishes a citizen of a Republic from the citizen of a despotic Government where all the sovereignty is lodged in the Government and not possessed by the citizens.

And your petitioner further saith, that in this case the law is too defective in the ordinary course to reach and to redress the grievance.

And your petitioner further saith, that the Chief Officer of the Executive Department, as well as the heads thereof, and the officials therein, have surrendered their constitutional duties, powers and responsibilities to the Commissioners, and are aiding and abetting them in enforcing the illegal powers herein set forth, instead of resisting the encroachments of the Legislative Department; and that in the case of *Hinckley* v. *Eaton et al., Commissioners under the Civil Service Act*, before the Circuit Court, at a term thereof held by Judge Wallace, in a similar proceeding, by a citizen in his own proper person, to vindicate his equal civil rights, reserved under the Constitution, the United States Attorney of Southern New York, under directions from the Attorney-General, armed with an autograph letter from the President, appeared in behalf of the Commissioners, one of whom acted as counsel in the case, and claimed the right to control, and seized the proceedings of the relator and smothered his petition of right; and by reason of the exercise of illegal powers, the Commissioners aforesaid and the Legislative Department encroached on the Executive, and the Executive and Legislative Department encroached on the Judicial Department, and all the departments under the direction of, and aided and abetted by, the Commissioners, trampled upon the rights of a citizen.

And your petitioner makes a brief and condensed statement of the powers and duties of the Commissioners, under the provisions of the Act, and the rules made under color thereof, and saith:

That the Commissioners are not elected by the people, but are appointed by the President, by and with the advice and consent of the Senate.

They can hold their offices for life unless removed by the President.

The office exists by virtue of an Act of Congress.

Not more than two of them shall be adherents of the same party.

It is made the duty of the Commissioners to aid the President, as he requests, in preparing the rules to carry the Act into effect.

After the promulgation of the rules which the Act—approved January 16th, 1883—defines and prescribes, directing in the said act the nature of the rules in detail, it became "the duty of all officers in the departments and offices to which any such rules may relate, to aid" and in effect to be the auxiliaries of the Commissioners "to carry the rules into effect."

These rules relate to every officer in the several legislative, judicial and executive branches of the Government.

The Commissioners have the power, provided the rules do not conflict with the rules prescribed by Congress and directed to be made by them, to legislate and make new rules and have control of competitive examinations of those seeking office, without the aid of the President or Congress.

It is the duty of the Commissioners to make investigations concerning the conduct of its own subordinates as well as the conduct of all the officers in the public service in respect to the execution of this Act.

The Commissioners may investigate and report in form to the President, but it is made the duty of the President to transmit the report to Congress annually; and it is by the rules, the duty of the Examiner appointed by the Commission to report any irregularities in respect to the execution of any of the provisions of the Act to the Commissioners.

The Commissioners have power to appoint a Chief Examiner and an unlimited Board of Examiners in any of the States and Territories.

It is the duty of the Secretary of the Interior to furnish the rooms, stationery and printing, and of all the Departments to give the Commission the use of the public buildings in every State or Territory.

The Civil Service Act and this Commission divide the citizens into classes, to wit:

The Excluded Class, which includes all persons not classified, citizens who do not seek office under the Act and the class which uses intoxicating beverages to excess, and

The Included Class, to wit: All persons who shall seek or hold offices in the departments included in the rules of the Civil Service Commissioners, which class is limited in number.

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The Excluded Class, which includes all persons not classified, citizens who do not seek office under the Act and the class which uses intoxicating beverages to excess, and

The Included Class, to wit: All persons who shall seek or hold offices in the departments included in the rules of the Civil Service Commissioners, which class is limited in number.

The Commissioners can select from citizens classified and grade them; they can, by their Examiners and Boards, exercise the powers and duties vested in the President and Senate, or which can only, by the Constitution, be vested by Congress in the heads of executive departments or courts of law, in judging and determining the fitness of individuals for office by competitive examinations on questions educational, personal and physical.

It is the duty of the Commissioners to have open and competitive examinations to test the fitness of applicants for office, and to see that no officer or clerk in the departments under the Civil Service rules be appointed until he has passed an examination and received a certificate in accordance and conformity with the rules of the Commission.

The Commissioners have adopted a rule or regulation that no more applicants will be examined in any State or Territory whenever there shall be on the Register of any State or Territory more than are likely to be required for certification during the next six months until such excess has ceased, unless otherwise ordered by the Commission (*Regulation* 54).

The Commission will certify four names, and no more, to fill a vacancy.

No officer or clerk can be promoted or appointed in the departments until he has passed an examination in conformity with the rules of the Commission.

The Commission can register any person, showing his grade and proficiency, which entitles him to be deemed a proper subject for an appointment to office; and this entitles the certified subject to be treated with great tenderness, for any officer of the United States Government who makes any false statement concerning his examination, which may injure his chances of promotion or appointment, is liable to a prosecution for wilful and corrupt lying, under the provisions of Section 5, to be found guilty of a misdemeanor, and upon conviction fined not less than one hundred dollars, or by imprisonment not less than one year.

No person can be promoted in the departments of the Government unless in offices where examinations for promotion are not now held without the certificate of the Commissioners.

The Commission do not allow any person in the service to influence the political action of any person or body, or to interfere with any elections.

The Commission make any violations of the rules or regulations cause for the removal of any officer in the executive civil service (Rule XXIV.) and will make regulations to carry the Civil Service Act into effect.

It is the duty of the Commissioners to see that the citizens, who are the victims of this Act, and have been appointed in the civil service, do not interfere with politics and render no political service; that they do not wilfully lie about their fellow Civil Service subjects or the Commissioners; to see that no Senator or Member of the House of Representatives recommends any person in the departments to office; that no Senator, Representative, nor any executive or judicial officer of the United States violates the 11th, 12th, 13th or 14th Sections of the Civil Service Act—in the event of such violation the guilty person is to be deemed guilty of a misdemeanor and punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding three years.

The provisions of the law give to the Commission powers of supervision over the people, the Senators, the Members of Congress, the judicial officers of the courts, over the President and the heads of all the departments and all the officers of the United States—to which any rules relate—and requires the Commissioners, in effect, to report to Congress thereon; it divides the people into classes and grades them, determines their qualifications for office, it protects them from the influence of those in public office by forbidding the public officers to contribute any money or valuable thing to promote any political object whatever, and forbids the public officers to use their official authority to influence anybody; it does not allow the people to apply directly to the President or through their Representatives, Members of Congress or Senators, for office for themselves or for their fellow citizens; nor does the spirit of this Act encourage the body of the people to meddle with politics—but the people can, by following certain rules and by diligent study, seek office, provided they do not wish to render any "political service," and take the risk of being wickedly and corruptly charged with wilfully and corruptly lying about the examinations, the Commissioners and their fellow-classified subjects and officials or with violating the highly penal sections of the Civil Service Act, subjecting the violators thereof to fine and imprisonment.

The Commissioners are authorized by the Act to report to Congress and supervise the conduct of the President and every officer in the Executive Department, and are actively engaged in supervising that department; and are authorized to see that it renders all due aid required to execute the rules they may promulgate from time to time under the Act; and also to supervise the conduct of the Judicial Department, in the enforcement of the 11th, 12th, 13th, 14th and 15th Sections of the Act—the violations whereof are deemed misdemeanors and punishable by fine and imprisonment or both.

In effect a benign and parental government or censorship, exercising dominion over the people in political matters, wherein they fail to be capable of self-government, either in their own persons or in selecting their servants—aiding the President to do those Constitutional duties which he is unequal to either in capacity or by provisions of law—seeing that the Legislative Department suffers no discredit by injudicious action in the recommendation of candidates for office, and that the Judiciary commits no crime.

The President has no control over the duties ond operations of this body—but it is the duty of every officer of the Government to endeavor to carry the Act and rules into effect, and the Commission influences and controls the appointment and promotion of the officers in the departments.

And

Binding the Executive hand and foot in the appointment and removal of officials, under color of this Act, the Commissioners deny the people the right to turn their servants out; and the power to control the Government, and Legislative, Censorial and Inquisitorial powers, are exercised by the Triumvirate.

The powers and duties of the Commission are executive, and the Commission is dependent upon the Legislative Department for its existence, and the Commissioners and its officers are dependent on the Legislative Department for subsistence.

And your petitioner shows that the said Commissioners are exercising unconstitutional powers under color of the Civil Service Act, approved January 16th, 1883.

This act vests the discretionary power delegated to the President by the Constitution in the Commission; and the execution of this high trust is delegated to a Board of Examiners, and if the Act is constitutional the President is freed from his responsibility. He cannot be impeached for the acts of the Commission nor unless for surrendering his powers.

Congress has no power under the Constitution to nominate, appoint or confirm any appointment; nor has the House of Representatives.

Under Article II., Section 2, Subdivision 2, of the Constitution:

The duty of the President is to nominate and appoint.

The duty is judicial in its nature, and the President is the donee of a highly discretionary power in trust which cannot be delegated or surrendered by him to any body or person, nor can it be taken away from him. No one else can execute the power or trust. *Delegatus delegare non potest.*

"Every delegated authority imples a trust, responsibility follows, as the shadow does its substance."

St. George Tucker's Blackstone, pages 18 *and* 19, *Vol* 1, *Appendix.*

This power to decide and pass judgment upon the question of the honesty, capacity and fidelity and the fitness of a citizen for office is a discretionary power in trust and cannot be delegated.

It is the duty of the President to nominate and appoint, subject to impeachment; and no body, council or Commission created by Congress can execute or aid the President in the execution of the trust.

Saith Chancellor **Kent** :

"The qualities required in the Executive are promptitude, decision and force and most likely to exist when the Executive authority is limited to a single person. Unity increases the responsibility of executive power. Every act can be traced to the proper agent when there are no associates to divide the responsibility. The eyes of the people are directed to an object and for these reasons. *De Lolme* (Constitution of England, p. 111) considered it to be a sound axiom—that the executive power was more easily confined when it was one.

"'If the execution of the laws,' he observes, 'be intrusted to a number of hands the true cause of public evils is hidden. Tyranny in such states does not always beat down the fences that are around them. It mocks the efforts of the people not because it is invincible but because it is unknown.'

"The justness of these reflections is confirmed by the proceedings of the council of appointment in New York under the Constitution of 1777 where all responsibility was there lost by reason of the constant change of the members and the difficulty of ascertaining the individual to whom the origin of a bad appointment was to be attributed."

Vide 1 *Kent's Com.*, 272, 273.

"No one desired that the sole power of appointment should be vested in the President alone ; and the only question was where the revisionary power should be lodged ; that it ought to be in a body independent

of the Executive and not in any body of ministers that might be assigned him was apparent, * * *"

Formation of the Const., Book IV., Ch. IX., p. 239.

Vol. II. Curtis' History of the Constitution.

The duty of nomination is *judicial* in the exercise of the power of selection, wherein the Constitution gives the widest possible range in the judgment of the capacity and qualifications of the nominee to be chosen from the mass of the people—unlimited by any division or classification whatsoever—and *ministerial* in the appointment.

The judicial powers of the Executive have been lodged in the Commissioners who select the nominee and render judgment of his qualifications and present him to the officers of the Executive Department; whose duty it is under this Act, to exercise the ministerial power of appointment — "to carry this act into effect." In the event of failure so to do, the Commission, whose duty it is to carry this Act into effect, would report to Congress, and if the Act is constitutional the President might be impeached; and so the Act in effect divests the constitutional power of the President and vests it in the Commissioners.

The provisions of the act delegating powers and duties, and the office of selecting the nominees for office and passing judgment on their qualifications and fitness is an encroachment of Congress—the Legislative Department—on the powers, duties and offices of the Executive Department.

The House of Representatives has no power to nominate by any constitutional provision—nor has the Senate, nor has Congress.

Under color of the provisions of this Act the power of selection by the President is limited to the persons certified and selected by Commissioners.

This Act vests the office of nomination in a body created and which exists at the will of Congress, to which this Commission, in effect, reports, and which has the power to control and influence the Commisioners in executing the office of selecting the officers of the Executive Departments of the Government. The offices of the Executive Department are surrendered to the Commission, and the duties and responsibilities vested in the Executive Department are divided into fragments, placed in the hands of an unlimited number of irresponsible agents, to be scattered all over the States and Territories of the United States.

Two of the three departments of the Government have combined to shift the powers and duties directed to be executed by one department to another, and are destroying the checks and balances and divisions made by the Constitution.

It is a political maxim that the Legislative, Executive and Judicial Departments ought to be kept separate and distinct; and the Constitution divides the power upon this principle.

> "There can be no liberty where the Legislative and Executive powers are united with the same person or body of magistrates; or if the power of judging be not separated from the Legislative and Executive powers."
>
> *Montesquieu—the King.*

> "When the Legislative and Executive powers are united with the same persons or body there can be no liberty, because apprehensions may arise lest the same

Monarch or Senate should enact tyrannical laws to execute them in a tyrannical manner."

Id.

"Where the power of judging is joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control."

Id.

This feature is seen throughout the State Constitutions. The Constitution of Virginia declares:

"That the Legislative, Executive and Judiciary Departments shall be separate and distinct—so that neither exercise the powers prorerly belonging to the other."

The Constitution of Massachusetts declares:

"That the Legislative Department shall never exercise the executive and judicial powers, or either of them."

"Where the sovereign power is lodged there it must remain."

Cooley on Const. Lim. (117.)

The legislative power to limit the equal civil rights of a citizen should be restrained.

"It is the plan of the Constitution to restrain the Legislative Departments and to subject their acts to judicial decision whenever it appears that such acts infringe Constitutional limits, and without this check no certain limits would exist of legislative power."

Daniel Webster.

> *And* "It is necessary to restrain legislative power, as its bare will can give being to the laws, so its bare will can also annihilate them, and if I may be permitted the expression, can change the Constitution as God created light."
>
> *De Lolme, Sec.* 585—*B.* 2, *Ch.* 2.

> "The want of a proper barrier between the several powers of the Government as contemplated in the theory of the Constitution, hath left both the Executive and Judiciary Departments [in the opinion of Mr. Jefferson, *Notes on Virginia*, 215 *Paris Edition*] dependent on the legislative for their subsistence in office, and some of them for their continuance in it." "If, therefore, the legislative assumes executive and judiciary powers, no opposition is likely to be made, nor if made, can it be effectual, because in that case they may put their proceedings in the form of an Act which will render them obligatory on the other branches."
>
> *Vide St. George Tucker*, 1 *Tucker's Blackstone, appendix, Vol.* 1, *page* 81.

The only means by which the people can retain power is to elect a President who will have the power to turn out the public servants with whom the people are not satisfied, and put new ones in their places, with or without cause, or any reason other than that it is the will of the people—otherwise they will hold by life tenures and aspire to control their masters, the people.

The provision that not more than two of the Civil Service Commissioners shall be adherents of the same party is unconstitutional, because in the United States the number of parties and the number of individuals is equal.

Tot homines quot sententiæ.

Five candidates for the office of President were before the people at the last election.

The provision of the Second Section providing that when the said rules shall have been promulgated it shall be the duty of all the officers of the United States in the departments to carry said rules into effect—together with the provisions of the statute giving the control of appointments and promotions in the departments, gives the Commissioners, who hold their office by Act of Congress, control of the Executive Departments, thereby confusing legislative and executive powers.

The divisions geographical, educational and personal, are unauthorized by any provision ot the Constitution.

The provisions of Section 2, and of the several sections of the Act, subjecting a citizen to a personal examination, testing his fitness for office, grading him by discretionary tests of his moral, intellectual and physical capacities, limiting his qualifications for nomination, and placing him and all citizens who do not seek office by application in writing, according to the rules of the Commissioners, in the excluded class, together with all who drink alcohol to excess, as well as those who have been found wanting and not registered on the books of the Commissioners as proper subjects for the operation of the severe regulations and savage statutes of the Commission, are illegal. Under the rules an American citizen can be made to hop, skip and jump or play base ball before the Commissioners.

The fifth division—that no person in the public service is for that reason under any obligations to render any political service, and that he will not be removed, or otherwise prejudiced for refusing so to do, is illegal.

Definition of "*Political*":—Pertaining to public policy or politics; relating to State affairs. Pertaining or relating to policy or to civil government and its administration; pertaining to a nation or State.

Vide Webster's Dictionary.

There is no definition of this word which can give it any other effect than to discharge the person from all duties whatsoever.

The officeholder is also a citizen; he is a corporator, a part of the body politic; the Constitution guarantees his equal rights; he does not sink his citizenship by accepting a public office, and if there be any popular definition of the word "Political" not in the dictionary it does not signify crime.

Every citizen has an "office"—the Latin *officium* meaning a *duty*. It is his duty to vote; it is his duty to know about the political affairs of his country; it is his duty to take an active part in the politics of the nation; he has the right to contribute money to pay the expenses of mass meetings, to promote political purposes; and, in fact, political life and activity constitute the basis of republican institutions and the government of the people.

The eighth division requiring the appointing powers in the departments to give notice or report to said Commission confuses departments which the Constitution has made distinct and separate.

The third division of Section 2 gives the commissioners control over the examination, and deprives the President thereof. The President's power expired when the rules prescribed by Congress defining his duty were drawn by the Commission and subscribed by him.

The Commissioners under the Act have control, and legislate with reference thereto.

The legal effect of the third division is that after the rules are prescribed by the Government, said Commissioners shall make regulations for and have control of such examinations.

The fourth division—providing that there shall be a period of probation—is void, because it does not specify the duration or nature thereof, nor does it clearly appear whether the probation applies to the Commissioners or the applicant, or both.

"*Probation,*" definitions of—*Webster's Dictionary*:—The year of novitiate which a person must pass . . . . to prove his virtue and his ability to bear the severities of the rule . . . . "*Probation* will end with the present life."

The appointment must be absolute, and not conditional.

The second subdivision of Section 2 prescribes and defines the rules the President shall declare, to wit: the Eight Fundamental Rules. This direction is an encroachment upon the Executive office, limiting its power, and prescribing rules in the execution thereof.

The legal effect of the fourth division of the Act gives the Commission supervision over "those in public service"—"in respect to the execution of the Act"—and, in fact, supervision over the officers in the Legislative, Executive, and Judicial branches of the Government.

The fifth subdivision is in effect a provision that the Commission report to Congress annually in relation to the execution of the law, and make any suggestion it may approve for the more effectual execution of this Act, and the President is a mere agent to do a ministerial act in transmitting the report to Congress concerning the execution of the Act.

SECTION 3. This section delegates the power to the Commissioners to appoint a Chief Examiner and an unlimited Board of Examiners in any of the States and Territories to carry out the purposes of this Act.

SECTION 5. Provides that any person in the public service who shall wilfully and corruptly obstruct any person in respect of his right of examination under the rules or who shall wilfully and corruptly make any false representations concerning the examinations (meaning the Commissioners), under the rules or concerning the person examined or who shall wilfully or corruptly furnish any person any special or secret information injuring the persons so examined or to be examined being appointed, or employed, shall be deemed guilty of a misdemeanor, and upon conviction be punished by a fine of not less than one hunhundred dollars and not more than one thousand, or by imprisonment not less than ten days or more than one year;—is void because Congress has no power to enact laws to punish common law offences.

The punitory or vindictive clause is limited to officers of the United States Government and is intended to protect the classified, graded and certified classes of the Commission.

Under this law any officer of the Government found guilty of any of the offences mentioned may be put on trial under the Act, and the Commissioners have appointed an Examiner to report irregularities in respect thereto.

This fifth section is a revival of the action of *scandalum magnatum*, which exists under the British Constitution to protect the nobility and distinguished personages from lying and slander; and while it is perfectly settled that Congress hath no jurisdiction over common law offences, that body logically protected the new order by extraordinary statutes, and it will probably be insisted, in behalf of the new order, that the statute can be maintained by virtue of the provisions of the Constitution, giving power to Congress "to provide for the general welfare of the United States" and "for carrying its powers into effect."

That provision of Section 5 of the Civil Service law to punish any person in the public service who shall wilfully and corruptly make any false statement relating to the persons included in the provisions of the Act is subversive of Liberty of Speech and Freedom of the Press.

Vide Blackstone Comm., Tucker's Appenpix.

"It is a fundamental principle of the Articles of the Federal Constitution that no power to punish detraction and slander should be claimed by the Federal Government, leaving it to the State Governments to exercise such jurisdiction over the subject as their several Constitutions and laws permit."

Tucker's Blackstone, Vol. II., pp. 28, 29, *Appendix.*

An Act similar in spirit and in constitutional infractions was passed in 1798:

"An Act was passed in Congress on the 14th of July, 1798, whereby it was enacted that if any person shall write, print, utter or publish any false or malicious writing against the Government of either House of Congress or the President with intent to defame them or either of them or bring them or either of them into contempt or disrepute, or to excite against them or either of them the hatred of the good people of the United States, being thereof convicted before any Court of the United States, the person shall be punished by a fine not exceeding two thousand dollars or by imprisonment not exceeding two years. This Act was limited in its duration to the third day of March, 1801, the very day on which the period for which the President was elected was to expire and previous to which the event of the next Presidential election must be known."

Vide Vol. II., Tucker's Blackstone, p. 15, *Appendix.*

This is the only precedent that can be recalled for the provision in the Civil Service Act concerning slander. The questions of the Freedom of the Press and the freedom of speech are always discussed together, and the laws on the subject are similar. In reference to the statute of 1798, St. George Tucker, the learned editor of Tucker's Blackstone (*vide p.* 15), says:

> "The consequences of this Act of 1798, as might have been foreseen, were a general astonishment and dissatisfaction among all those who considered the Government of the United States as a limited system of Government in its nature altogether federal and essentially different from all others which might lay claims to unlimited powers. The constitutionality of the act was accordingly very generally denied or questioned by them. It was alleged that to the freedom of speech and of the press the American nation is indebted for its liberty, its happiness, its enlightened state—nay, more, for its existence. * * * It was said that if the genius of the Federal Constitution has vested the people of the United States with a cen-

sorial power, why was this scrutiny to be confined to the freedom of speech ?"

Vide pp. 17, 29.

This Act protects classes under Rule XV. whereby the Commissioners may give to any person examined a certificate stating the grade which such person attained, and his proficiency in the several subjects as shown by the marking.

The person having a certificate under Rule XV. has a title distinguishing him from the masses, showing his grade, and that he belongs to a certain class with substantial and exclusive privileges over his fellow-citizens in obtaining appointments and promotions under Section 7. He is protected with great tenderness from the scandals and lies of the officers of the Government by the statute, Section 5, which the Commission enforce and the execution whereof they supervise.

DEFINITIONS.—"Title": The instrument which is the evidence of right.

Webster's Dict.

"Noble."—Definition 3: Distinguished from the masses.

"Nobility."—The collective body of titled and privileged classes of the State.

Webster's Dict., Def. 3.

Congress has no power to grant titles of nobility.

Section 7 of said Act provides, in effect, that after July, 1883, no persons shall be appointed or enter or be promoted in either of said classes provided for in said Act until he has passed an examination under the Civil Service Act.

The citizens are not only classified into grades upon questions geographical, educational, personal and physical (Rule

XVII., p. 72), not forgetting distinctions of age, of family and of sex, and a class who cannot hold office, but are compelled by statute, if they seek office, to submit to the indignity of a personal examination as to their capacity, honesty and fidelity to the Constitution by an irresponsible Board of Examiners instead of the President of the United States, or the heads of the departments.

The eighth section, which provides that no person habitually using intoxicating liquors to excess is eligible to appointment is unconstitutional.

> "In the Constitutional Convention it was moved to insert a clause to give Congress the power to make sumptuary laws, which passed in the negative."
>
> 1 *Elliott's Debates*, 282.

SECTION 10. Provides that the Senators and Members of Congress—the representatives of the people and the Constitutional advisers of the President—shall not reccommend any person to office. And provides, in effect, that the voice of the people cannot be heard concerning the qualifications and fitness of their public servants to be appointed through their constitutional representatives.

SECTION 15. Provides that every or any person found guilty of violating any of the provisions of the four preceding sections (11, 12, 13 and 14) shall be punished by fine and imprisonment.

Under the provisions of this section the highest officers —President, a Justice of the Supreme Court or any other officer of the Government who gives a dollar to any officer of the Government to print ballots or pay the expenses of a mass meeting is liable to be found guilty of a misdemeanor punishable by fine and imprisonment.

Vide Tucker's Bl. Vol. II., pp. 28, 29, *Appendix.*

The provision that no judicial officer of the United States shall solicit or receive any contribution for a political purpose from any officer of the Government, and that any judicial officer violating these provisions shall be deemed guilty of a misdemeanor and be punished by fine of not less than one thousand dollars and imprisonment not exceeding three years, together with the provisions and the divers rules and powers of the Act authorizing the officers of the Executive Department and the Commissioners and their Examiners to enforce and carry the Act into effect, threaten the independence of the Judicial Department.

Because the Executive and Legislative Departments, with all the machinery of the Government, by the agency of the Commissioners acting under joint authority from these departments, may, by false testimony and under color of an unconstitutional law put a Justice of the highest Court in the land on trial. The Judges cannot be threathened or put on trial without encroaching upon the independence of the Courts.

And the Commissioners have taken upon themselves the duty of enforcing the Act, and have appointed and declared it to be the duty of the Chief Examiner to report any irregularities under the same.

Congress cannot delegate the duty of supervision over the departments to anybody.

This constitutes a censorship over the highest departments wherein the sovereignty is lodged.

Congress has no power over the judicial officers of the Government or to enact any law giving the Commissioners supervisory, inquisitorial or censorial powers to enforce its provisions, penal, punitory and vindictive. Nor can it exercise, or delegate to anybody, inquisitorial or censorial powers supervisory over the Executive, the Legislative or the Judicial Departments, or over the people, because it is the right, the privilege of the citizen, of a Republic, to exercise this sovereignty, which is his birthright, and to be free.

The Civil Service Commission is a Commission appointed by the President by and with the advice of the Senate ; the President can remove the Commissioners, but a careful consideration of the law shows that he has no control over them in other respects ; that his power was exhausted when he approved the rules, and the rules he made were prescribed and dictated by the Legislature.

It reports to Congress ; in form, it is true, to the President, but only " for transmission to Congress."

The law constituting the Commission relates to every officer of the Government who is directed to aid them in all proper ways, and makes them auxiliaries to and under the Commissioners.

It also provides for the punishment of any officers of the Government, including Judges of the Supreme Court, who may subscribe to any political object ; and the Commissioners are taking active steps to enforce the law by the Chief Examiner and are directing him to inform them touching any irregularities in reference to the law.

Under its provisions they can prosecute a Judge of the Supreme Court for giving a dollar to one of his clerks to pay his share of the expenses of printing and distributing ballots or of holding a mass meeting.

The Commissioners limit the power of the people by limiting the powers of the President to carry out the will of the people to remove or appoint the officers of the Government, and deny the people the control of the public servants.

They limit the right of the people by limiting their qualifications and right to be nominated and appointed to offices of trust and emolument under the Government.

They limit and infringe the rights of the people by limiting and threatening the independence of the Judicial Department by assuming censorial powers in the enforcement of the penal sections of the Civil Service Act, providing a punishment for an innocent act in violation of no existing law by excessive fines and cruel and unusual punishment.

They limit the power of the people by denying citizens in office the right to render political services, to carry out the will of the people, and by restraining the Senators and members of the House of Representatives, their constitutional agents, from representing them in recommending citizens for nomination and appointment to office.

The Commissioners infringe and encroach upon the constitutional rights of the people by executing powers lodged by the people in the Executive Department, by virtue of the powers delegated to them by the Legislative Department, confusing the powers and offices of the several departments, and are destroying the checks and balances of the Constitution.

And

The Commissioners deprive the ballot of its force in the direction and control of the Republic by limiting the powers of the President, and limiting the duties of the representatives of the people in the House of Representatives and in the Senate.

The provisions and rules that a citizen cannot be appointed to an office without submitting to the degradation of making a personal and formal application in writing, and of being subjected to the indignity of an examination by the irresponsible agents of the Commission, and of receiving certification from them as to his fitness, are repugnant to republican government.

The Constitution prescribes no qualifications except that the *President* shall be a natural-born citizen, his age, the age of the Senators and Representative in Congress.

Nor has the Government or its officers power to require qualifications, except possibly in the army or navy or in the courts.

Constitution, Sec. 8, *Subds.* 12 *and* 13.

Every citizen is qualified and has the right to be qualified, and have the capacity to be nominated and appointed to an office.

The act limits the power of nomination and appointment —to a limited number—by establishing geographical, personal and educational qualification of the citizens, whereas the Constitution gives them the widest possible range without limitation, and the only questions which ought to be considered, even by the Executive Department, are:

"Is he honest?
Is he capable?
Is he faithful to the Constitution?"
Jefferson.

"The limitation of power, the frequency of elections by the body of the people, the capacity of every individual citizen to be elected to any public office to which his talents and integrity may recommend him, and the responsibility of every public agent to his constituents, the people, for his conduct, are the distinguishing features of a representative democracy."

Vide Tucker's Blackstone, Appendix, Vol. 1, *pages* 37, 38, 39, 40.

"As long as office is open to all men and no constitutional rank is established, it is true republicanism."

Alexander Hamilton, Yates' Minutes, Const. Con., 499, *Elliot's Debates.*

"In the United States there is but one order."

C. Pinkney, Proceedings of the Const. Convention, Elliot's Debates, 485 *Yates' Minutes.*

"Who are to be the objects of the popular choice? Every citizen whose merits may recommend him to the esteem and confidence of his country. No qualification of wealth or civil profession is permitted to fetter the judgment or disappoint the inclination of the people."

James Madison, No. LVII. Federalist.

"It is indispensably necessary to the very existence of democracy that there be a perfect equality of rights among the citizens."

Tucker's Blackstone, Appendix, Vol. 1, *p.* 28.

And your petitioner shows that these are the questions under the Civil Service Commission, determining the qualifications of a citizen for office.

Question 6. Page 119 Commissioner's Report to Congress, January, 1885.

> "Submit a sketch of a memoir, with illustrative diagrams showing the latest results of observations on the frequency and distribution of auroras over the Northern hemisphere."
>
> "Submit a sketch of a memoir, on the various methods of determining the heights of clouds and the results of actual observation on this subject."

And that the following is a question which an irresponsible Examiner might ask—which, for a sinister purpose, he might put in the hands of a surgical Civil Rights operator or Civil Service Examiner:

> "Solve the equation of the fifth degree."

[*Newcomb's Algebra for Colleges*, page 417, Section 342, Book XIII.:

> "342. Equations which can be solved. If the degree of the equation is not higher than the *fourth*, it is always possible to express the root algebraically as a function of the coefficients.
>
> "But if the equation is of the fifth or any higher degree, it is not possible to express the value of the root of the general equation by any algebraic formulæ whatever.
>
> "This important theorum was first demonstrated by Abel in 1825."]

Question 3, page 98:

"Into what co-ordinate branches is the Government divided and what are the principal functions of each?"

It may be said that the Commission is honestly executed, but the Commissioners are mortal, and the most distinguished member of that body as originally constituted has resigned.

The Constitution itself, and every clause thereof, is a right and a barrier to protect the rights, privileges and immunities of the citizen, and every infringement thereof is an injury and a grievance to every citizen, and every individual has the right to a remedy to redress his grievance.

Bl. Com., 141, 142.

And Blackstone classifies the Constitution and Parliament as civil privileges.

Bl. Com., 128, 141, 142, 143.

And these reserved rights are among the powers not delegated to the United States by the Constitution, but reserved to the States respectively or to the people.

Art. IX., Amendment to Constitution.

And the rights, privileges and immunities of an American citizen, include his right to have the government administered in accordance with the Constitution, and his right to have redress for any infringement upon his rights as a citizen according to the common law by any of the servants of the Government.

The Constitution is a warrant from the citizen prescribing the duties and limiting the powers of the public servants in the several departments of the Government, which duties and powers can be qualified or revoked by the citizen by virtue of his sovereignty.

And the citizen has delegated no power to Congress to limit or qualify his civil rights.

Any official, or his agent, or servant concerned in unwarranted acts in defiance of the letter and spirit of the Constitution, or assuming the power to limit and qualify the civil rights of his master, is guilty of an impudent usurpation and contempt of sovereign authority.

Any limitation of the rights, privileges and immunities or liberties of a citizen, or any interference therewith by the Government, is usurpation and an infringement of the sovereignty of the people and unwarranted by any clause or provision in the Constitution. The Government has no power to limit or define his reserved rights. The ultimate sovereignty is in the citizen and not in the Government. This is an essential feature of a republican form of government. Lodge the sovereignty in the Government and the liberty of every man is at its mercy.

The citizen is a part of the body politic ; he made the Constitution. Congress cannot limit his rights. The Constitution did not make the citizen ; nor define his rights. The Constitution is a subordinate right to protect his rights, privileges and immunities (1 *Bl. Comm.*, 128, 141), which rights are, and he is a citizen, according to the common law. He is not bound to submit to the indignity of seeking office, or to submit his qualifications to the inquisitorial powers of any body, created by the Legislative Department, because the sovereign power to judge his qualifications, to nominate and appoint him, is lodged by the people in the Executive and in the Senate.

> " Where the sovereign power is lodged there it must remain.
>
> *Cooley on Const. Lim.*, 117.

The limitation and political division of the Executive and Legislative power is one of the rights of a citizen.
Bl. Comm., 141.

And the right of petition.
Bl. Comm., 128.

He hath the civil right equal to the civil right of any other citizen to hold office, subject only to the limitation specified in the Constitution, and if the President seeks to nominate him he has the right to be nominated, and by and with the advice and consent of the Senate, to be appointed to an office subject to no other limitation whatsoever. He has the right to render political service to his country, to take part in politics, to pay money to print ballots, and to defray the expenses of meetings when the mass of the people peaceably assemble, to use his influence with all his fellow citizens for political purposes, and his political life is not extinguished nor his liberties forfeited by accepting office.

While in office the citizen possesses all his civil and political rights. The Executive can, it is true, remove him without cause. But no clause can be found in the Constitution delegating power to Congress or to the Executive to restrain his political activity, or to interfere therewith.

De Tocqueville hath said :

> " Whenever the political laws of the United States are to be discussed it is with the doctrine of the sovereignty of the people that we must begin."
> *De Tocqueville, Chap. IV.*

The rights, privileges and immunities of a citizen are the rights, privileges and immunities mentioned in the statute, giving the Circuit Court jurisdiction to redress the deprivation under color of any law of any right, privilege or immunity secured by the Constitution of the United States.

R. S., Chap. 7, *Page* 111.

And are so declared therein in recognition and affirmation of the common law.

His rights, according to the common law, are the rights, privileges and immunities which the Constitution is made to defend, and are no more nor less than the liberties of the people; and are the rights, privileges and immunities of the liberties of the people assented to by King Charles I.; and are the rights, privileges and immunities declared in the bill of rights delivered by the Lords and Commons to the Prince and Princess of Orange, on February 13th, 1688, when they became King and Queen; wherein—

> "They claim and demand and insist upon all and singular the premises as their undoubted rights and liberties."

And are the rights, privileges and immunities recognized in the Acts of Parliament recognizing the rights and liberties asserted and claimed to be the true, ancient indubitable rights of the people of the kingdom—the birthright of the people according to the common law; and are "the rights, privileges and immunities declared as the rights of all Englishmen, usually called their liberties—and are coeval with the English Constitution—the birthright of every Englishman" and of the citizen of the United States according to the common law.

And added thereto is the sovereignty or political power which he gained by the war of the Revolution, whereby the people became possessed of the sovereignty or political power lodged in the Crown and Parliament, and every citizen became sovereign and possessed of the right of his share thereof.

The sovereignty under the English Government is lodged in the Crown and Parliament.

In the United States the sovereignty or political power is distributed, to wit :

1. The powers delegated to the Legislative, Executive and Judicial Departments of the General Government, which departments are separate and distinct.

2. The powers reserved to the States respectively or to the people, preserved by the Ninth and Tenth Articles of the Amendments to the Constitution.

ART. IX.

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

ART. X.

"The powers not delegated by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people."

The sovereignty or political power retained by the people is in the citizen and the sovereignty delegated to the Government is subordinate and auxiliary thereto.

By virtue of the sovereignty of the citizen he can limit or qualify the powers delegated to the several departments under the Constitution, or abolish the Constitution and the departments altogether.

The sovereignty of the citizen like the rod of Aaron will swallow all the rest.

These are the natural rights, liberties, powers or sovereignty of a citizen which are not delegated in the Articles of the Constitution. And one of his rights is the constitutional limitation of the powers of the Legislative and Executive Departments "by bounds so certain that it is improbable that they should either mistake or exceed them without the consent of the people."

1 *Bl. Com.*, 149, 141.

"Or that laws would be enacted destructive of the general liberty."

1 *Bl. Com.*, 141, 143.

The citizen hath exclusive powers inquisitorial, censorial and supervisory over the public servants in the several departments because of his right to have the Government administered according to the Constitution, and to guard against the encroachments of legislative and executive power in order to have his liberties defended and the rights and powers of public officials defined and limited; and the Constitution and every clause thereof is his right.

1 *Bl. Com.*, 140, 141.

"The Constitution, however, and the provisions thereof, are merely auxiliary and subordinate rights or privileges to protect and defend his rights, privileges and immunities as a citizen according to the common law, and his sovereignty as a citizen of the Republic.

And among these rights is the right of redress, for, saith Blackstone:

> "In vain would these rights be declared, ascertained and protected by the dead letter of the law if

And the case of *Rex* v. *Badcock*, 6 *East.*, at 359, granting a "writ against persons exercising the offices of Commissioners of the Paving Act, to whom a power was given of imposing rates and taxes, for that was greater than the law could give," is a case in point.

And in the case of *The People ex rel. Boltzer* v. *Daley et al., Trustees of the Village of Edgewater*, 22, *N. Y. W. Digest*, 171, it was held * * * "That relator was entitled to maintain these [mandamus] proceedings, for it is only when the application for the writ is made to secure some personal or private redress that the applicant must be shown to be interested in obtaining it before the writ can be directed to issue. That where the act omitted to be performed affects the public interests generally, and all citizens are equally concerned in securing its performance, it is sufficient to support the application that the applicant is a citizen and entitled to insist upon the execution of the laws of the State."

In the case of *The People ex rel. &c.*, v. *The Comms. of Highways*, 19 *Wend.*, 56, *Cowen, J.*, said : "In the matter of a public right any citizen of the State may be a relator in an application for a writ to enforce the execution of the common law where he has no interest beyond that of any other citizen of the State.

"In cases to enforce some matter of private interest the title to relief at the suit of the relator must appear ; in a matter of public right, however, the people is the real party. In such cases the wrongful act is no more the concern of one citizen than another. It is the right of every citizen to see that a public grievance be remedied.

"In *Rex* v. *White, Rep. Temp. Hardwicke*, 92, speaking of *mandamus* for a public as distinguished from a private object, Lord Hardwicke said : 'The reason why we grant these writs is to prevent a failure of justice and for the execution of the common law or of some statute or the King's charter.'

" In case of an information in the nature of a *quo warranto* at the instance of a private individual who had no connection with the corporation, *Rex* v. *Brown*, 3 *T. R.*, 574, held, that his interest was sufficeint because 'the application was made to enforce a general Act of Parliament.'"

The erection of an illegal commission or the failure of the executive to execute his duties is a grievance, and of a nature calling for the petition of right.

In the bill of rights and declaration to William and Mary, 1688, it was declared "that the commission for erecting the late Court of Commissioners for ecclesiastical causes, and all commissions and courts of like nature, are illegal, as well as the pretended power of the King to dispense with the execution of the laws."

Tomlinson's Law Dict., " *Liberty.*"

And your petitioner shows that the Court can give redress, because among the rights of individuals is the right of redress, for, saith Blackstone :

> "In vain would these rights be declared, ascertained and protected by the dead letter of the law, if the Constitution had provided no method to secure their actual enjoyment" : (and among their subordinate rights is) "the limitation of the King's prerogative, by bounds so certain that he should not either mistake or exceed them without the consent of the people." (Among the subordinate rights of the subject is also included) "the Constitution, powers and privileges of Parliament, in order to keep the

Legislative power in health and vigor, so as to make it improbable that laws could be enacted destructive to general liberty."

1 *Bl. Comm.* (141).

"Upon principle, whenever the Common Law imposes a duty and no other remedy can be shown to exist, or only one, the Court will interfere by mandamus."

Judgm., 12 *A. & E.*, 266.

"And under the same rule the Court would issue any other proper writ.

And in a proper case it would be the duty of the Court to invent one.

In the early times the chief employment of the Chancellor must have been drawing new writs."

3 *Bl. Comm.*, 51.

And it is provided by statute (*West* 2, 13 *Edw.*) that—

> "Whensoever from thenceforth in one case a writ shall be found in the chancery, and a like case requiring like remedy no precedent of a writ can be found, a writ shall be framed by consent of the learned in the law lest it happen for the future that the Court of our Lord of the King be deficient in denying justice to the suitors."

Bl. Comm., Vol. 3, *p.* 51.

A statute which should deprive a party of all legal remedy would necessarily be void.

Potter's Dwarris on Statutes 474.
Cooley on Const. Lim., 289.
Oatman v. *Bird*, 15 *Wis.*, 28.

The Legislature cannot take away all remedy.

Cooley on C. L., 554 ; *vide cases cited in note.*
Dartmouth Colt. v. *Underwood*, 4 *Wheat.*, 510.

The legislative power to limit the equal civil rights of a citizen should be restrained.

> "It is the plan of the Constitution to restrain the Legislative Departments and to subject their acts to judicial decision whenever it appears that such acts infringe Constitutional limits, and without this check no certain limits would exist of legislative power."
>
> *Daniel Webster.*

To same effect see

Taylor v. *Porter* 4 *Hill*, 140.

"If a citizen has a right he must have a remedy if he is injured, and it is a vain thing for a man to imagine a right without a remedy."

Johnson v. *Sutton*, 1 *T. R.*, 312.

> *And* "It is necessary to restrain legislative power. As its bare will can give being to the laws, so its bare will can also annihilate them, and if I may be permitted the expression, can change the Constitution as God created light."
>
> *De Lolme, Sec.* 585—*B.* 2, *Ch.* 2.

> "The want of a proper barrier between the several powers of the Government as contemplated in the theory of the Constitution, hath left both the Executive and Judiciary Departments [in the opinion of Mr. Jefferson, *Notes on Virginia*, 215 *Paris Edition*]

'dependent on the legislative for their subsistence in office, and some of them for their continuance in it.' 'If, therefore, the legislative assumes executive and judiciary powers, no opposition is likely to be made, nor if made, can it be effectual, because in that case they may put their proceedings in the form of an Act which will render them obligatory on the other branches.'"

Vide St. George Tucker, 1 *Tucker's Blackstone, appendix, Vol.* 1, *page* 81.

And your petitioner further saith :

This petition is, in fact, also an information presented herewith, adapting itself to the forms of the court and the rules and practice of the Courts, which is the practice of the King's Bench and the English Court of Chancery, in the nature of an information for a writ in the nature of a *quo warranto,* because the proceeding and writ will give the petitioner a remedy, and is a proper writ; but the petition is also in form, as well as in substance, a petition of right, and the Court is bound to receive it, hear and consider it, although it hath the power to deny it; yet, if the petioner hath shown a grievance, the Court is bound to redress it, without regarding the forms of proceedure.

This is not an action sounding in damages, but a *petition* for *redress.*

In a petition of right, where the petitioner hath shown a case and a grievance, the duties of a Court become active and it will take control and direction of the proceedings therein.

The rights, privileges and immunities specified in the United States Revised Statutes, giving this Court jurisdiction to redress the deprivation under color of any law, of any right, privilege or immunity secured by the Constitution of the United States, are so specified in affirmation of the common law; and are the rights, privileges and immunities declared as the rights of all Englishmen, usually called their liberties, and are coeval with the English Constitution.

R. S., Chap. 7, page 111.
1 *Bl. Comm.*, (128) (141).

The United States Statute gives an action or right of redress, by implication recognizes and makes the infringement of a right a grievance.

> "The Petition of Right was a Parliamentary declaration of the liberties of the people, assented to by King Charles the First. Then succeeded the Bill of Rights, delivered by the Lord and Commons to the Prince and Princess of Orange, February 13th, 1688, when they became King and Queen, which declaration concludes with these remarkable words, 'and they claim, demand and insist upon all and singular the premises as their undoubted rights and liberties.' And the Act of Parliament enacting the same recognizes the rights and liberties asserted and claimed 'to be the true, ancient and indubitable rights of the people of the Kingdom, the birthright of the people of England, according to the Common Law.'"
> *Bl. Comm.*, (128).

And among the rights is the right of redress, for, saith Blackstone:

> "In vain would these rights be declared, ascertained and protected by the dead letter of the law if the Con-

stitution had provided no method to secure their actual enjoyment"; (and among their subordinate rights, is) "the limitation of the King's prerogative, by bounds so certain, that he should not either mistake or exceed them without the consent of the people." (Among the subordinate rights of the subject is also included) "the Constitution, powers and privileges of Parliament, in order to keep the legislative power in health and vigor, so as to make it improbable that laws could be enacted destructive to general liberty."

Bl. Comm., 141.

"If there should be any uncommon injury or infringement of the rights above mentioned, where the ordinary course of the law is too defective, there still remains a fourth subordinate right appertaining to *every individual*, the right of petition to the King or either House of Parliament for redress."

Bl. Comm. (143).

Any infringement of the constitutional rights of a citizen is a grievance.

Bl. Comm. (128) (149) (143).

And any limitation of the powers vested in the Executive Department by the people in the Constitution, or any infringement of the rights, privileges and immunities of a citizen which are guaranteed by its provisions, or the rights, privileges and immunities which are his rights, privileges and immunities reserved to him as one of the people in the Constitution, or his rights, privileges and immunities, according to the common law, is a grievance.

Bl. Comm. (143) (144).

And if there should be any uncommon injury or infringement of these rights where the ordinary course of law is too defective to reach, there remains the right of petition, pertaining to every individual, for redress.

***Bl. Comm.* (428) (141).**

"The right of petition is incident to republican government."

Story's Const., 1994, 1995.

"The only question is as to the *grievance* to be redressed. It is to be understood that the right is to petition the 'Government'; this must mean to address the petition to the appropriate department; to Congress, the Executive or the Judiciary, according to their respective jurisdictions as prescribed by the Constitution and laws."

Sec. 248, *Paschal's Ann. Const.*, 256.

"The question of jurisdiction and of right must always determine whether the redress sought can be granted."

Ibid.

"The only question is as to the *grievance*, to be redressed."

Ibid.

"If a public officer concerns in an unconstitutional act he is guilty of usurpation and contempt of sovereign authority which has forbidden him to pass the bounds prescribed by the Constitution. He has violated his oath. To omit him at the next election is not adequate punishment. Abuse of power is despotism, and the democracy that does not guard against it is defective.

> "If in any department of Government a man may abuse or exceed his power . . . . . . The right of one man is at the mercy of another."
>
> *Vide Appendix to Tucker's Blackstone, pages 22, 27, Vol.* 1.

"Nor can it be supposed with any shadow of reason, that in a Government established by the authority of the people it could ever be their intention to deprive themselves of the means of applying a remedy to abuses of unfaithful agents."

St. George Tucker, Tucker's Blackstone, Appendix, page 20.

The petition is to the sovereignty or political power. In England the Government is omnipotent and sovereignty is in the Crown and Parliament. In the United States Constitution the political power or sovereignty is distributed and lodged in the President, the Senate and House of Representatives, and the Judicial Department.

The petition must be heard by that department wherein the sovereignty or political power to give redress is lodged by the people.

JOHN QUINCY ADAMS:

> "The right of petition is a natural right of man not granted by the Constitution. It cannot be abridged or limited. A petition is a supplication. For what ? *For relief from those who have the power*

to give relief and who are placed in a situation to attend to the cry of distress.

"It was a right which could not be denied to the poorest, the humblest, and the most wretched.

"It was a right which could not be refused to the most vile, most abandoned, or most infamous."

Petition Deb. Cong., Feby., 1837.

"The right of the people to petition the *Government* for a redress of grievances is a necessary result of the rights of being a free citizen. It is a simple, primitive and natural right."

Cooley on Const. Lim., 349.
Potter's Dwarris on Statutes and Con., 536.

"It is a right, which in a Republican form of government results from the very nature of its structure and institutions."

Story on Cons., Sec. 1894.

"It is impossible that it should be practically denied until the spirit of liberty had wholly disappeared; and the people had become so servile and debased, as to be unfit to exercise any of the privileges of freemen."

Potter's Dwarris Stat. and Con., 536.

"In difficult times it shows itself in its full magnitude, it is a sacred right, *serves* as a safety valve, and gives to representatives or *other bodies* the most valuable information. It may right many a wrong, and the deprivation of it would at once be felt by every freeman as a degradation."

Cooley, Con. Lim., 349.

The Government.

> "By the Constitution, legislative, judicial and executive powers of the Government are created distinct and independent; each is intrusted with a portion of the sovereign authority within the sphere of its prescribed duties and powers."
>
> *Tiffany's American Theory*, 62
> *Potter's Dwarris Stat. and Con.*, 333.

"The Judicial Department has supreme authority to interpret and apply those laws to the right of every individual and subject within its jurisdiction."

Potter's Dwarris Stat. and Con., 334.

In the matters of several petitions to Congress concerning negroes held in bondage, this petitioner cites divers opinions.

Deb. Cong., Dec., 1837.

SENATOR ROANE, Virginia: "The petition must be for the redress of grievances, grievances to which the law-making power can apply a remedy, and not only be sent to a tribunal competent to hear them, but must relate to a subject upon which that tribunal can legally and authoritatively act."

"SENATOR DAVIS, Mass.: "It is due to the country to meet the subject of the petition with deliberation and to send forth reasons for rejection of the prayer."

HENRY CLAY, Senator from Kentucky: "The petitions must be received. But is this all? There must be deliberation on the question. To receive and not deliberate is denial of the right. Argument, inquiry, reasoning, consideration and deliberation lay at the very bottom of all our free institutions."

In the matter of petition of Quakers to abolish slavery in Dist. Columbia.

Petition. Deb. Con., 1797, *Nov. H. R.*

MR. GALLATIN (ALBERT), Pa.: "No petition should be rejected without examination and discussion, unless expressed in indecent terms.

"Without examination and discussion it was impossible to be able to form a sound judgment."

Mr. **Bayard, James A.**, Delaware: "The petition, whether the contents be right or wrong, reasonable or unreasonable, should be received, considered and determined. Should have the fullest consideration."

The petition was received and referred.

Deb. Con., 1837.

Caleb Cushing, Mass.: "Freedom of speech, opinion, petition.

"These rights the Constitution did not give. The Constitution rightly regards them as pre-existing rights. All that the Constitution does is to provide that these rights no power on earth shall alter, abrogate, or abridge.

"The right of petition, like the liberty of conscience and the press, is not a right given by the Constitution, but an original right of the constituent people of the United States, and one which they never parted with, but in their compact saved from all abridgment and limitation forever. The right of petition includes the correlative right that it shall be received and considered.

"Its denial would be a curtailment of the constitutional rights of the people. The right appertains to the petitioner, not the subject-matter; the obligation to receive is a corresponding duty."

In construction of constitutional rights it is held that contemporary history and contemporary interpretations may be called in to aid in arriving at just conclusions.

Dwarris, page 675, *citing*.
Stuart vs. *Laird, 2 Cranch.*, 399.

J. P. King. Senator from Ga.: "The right to petition includes the right, if the petition is signed by a citizen or citizens of the United States, and touching their interests as such, to have it received and considered."

Daniel Webster, Senator from Mass.: debate in Congress, March 1836: "The people feel oppression and know when they are aggrieved. They present their complaints in the form of a petition. This is their right. We are bound respectfully to consider it. The constitutional right of petition is not at the mercy of our discretion. The constitutional right to petition carries with it a corresponding duty that it shall be received."

Senator Buchanan, *Ibid.*: "These rights and duties are reciprocal. Refuse to receive and consider it and you deny the right of petition."

The question was solemnly determined by the Senate of the United States, to wit, that the petition shall be received, January 21st, 1805—19 States in the affirmative; 9 States negative.

"To receive the petition, and deny investigation and consideration in the accustomed forms of proceeding, is equivalent to a rejection of the petition.

"If we are bound to receive we are bound to hear and consider; an abrupt and premature rejection of the right to petition is a denial of everything belonging to the right which is of any importance."

Senator Prentiss of Vermont. *Ibid.*

"No petition can constitutionally be rejected and refusd a hearing on account of the nature of the subject of which it treats unless the subject be obviously

and unquestionably beyond the constitutional powers of Congresss."

SAMUEL PRENTISS, Senator from Vermont.
Ibid.

"The respectful mode of considering the petition, the proper mode, is the ordinary mode."

DANIEL WEBSTER.

"With this limitation of the right, it belongs exclusively to the petitioners themselves to judge of the subject matter."

SAMUEL PRENTISS, Senator from Vermont.
Ibid.

"A petition clearly unconstitutional, as to abridge the freedom of the press or respecting an establishment of religion, should be rejected. Doubtful cases should be received, because doubtful cases ought not to be decided without consideration."

DANIEL WEBSTER, Senator Mass. Debates in Congress, 1836.

March 9th, 1836, on question, "Shall the petition be received?" it was decided by the Senate in the affirmative.

Yeas, 36. Nays, 10.

Among the yeas were Benton, Buchanan, Clay, Clayton, Crittendon, Ewing (Ohio), Grundy, Hill (N. H.), Davis (Mass.), Southard, Tallmadge, Daniel Webster, Silas Wright.

Among the nays were Calhoun, Nicholas and Benton.

And he further saith, that the Court has jurisdiction to receive and consider a petition of right, because the

judicial power extends to all cases in law and equity arising under the Constitution.

Christian **v.** *State of Georgia,* **2** *Dall.,* **419.**

And the clause in the Constitution preserving the right of petition by implication extended all the judicial powers then existing of the English Parliament necessary to enforce it. Upon the division of the powers of the Government under the Constitution into Legislative, Executive and Judicial, this Court succeeded to all parliamentary powers of a judicial nature. This Court also inherited and succeeded to all the powers of the old National Council—that of a supreme tribunal of justice for the trial of great causes.

Vide Stubbs' Const. Hist., Vol. III., Ch. XV., p. 239.

In England under the British Constitution the petition was made to Parliament in its judicial and not in its legislative character. The King and Parliament were tribunals of law. The High Court of Parliament had for antecedents the ancient Court and Council of the King. All petitions of right to the crown must first go before the Chancellor. All petitions were examined by the Court and Judges to which the matters in question belonged.

> "Under the English Constitution, the petitions were made to Parliament and the Crown as tribunals of justice or courts of law rather than to Parliament as a legislative body."
>
> "The third attribute of the old National Council, that of a supreme tribunal of justice for the determination of great causes, was never shared by the Commons."

Stubbs' Const. Hist. of England, Vol. II., Chap. XV., page 259.

"This resulted, however, from the fact that the system of petition to the King or Council had been perfected before the Commons were called to Parliament; and thus the whole subject of judicature belongs to the history of the Royal Council rather than that of Parliament strictly so called.

"The High Court of Parliament had for one of its historical antecedents the ancient Court and Council of the King, which was as certainly the parent of the House of Lord as the shire system was of the House of Commons."

3 *Stubbs*, 265.

"The King's Court had, in its judicial capacity, been the germ of the whole higher judicial system of the country, as well as of the Parliamentary and financial machinery."

Id., 265.

§ 230. "The special circle of Sapientes—Councillors and Judges—to which Henry II. reserved the decisions of knotty questions of finance and law was perhaps the first germ of the late Council."

"The *Suprèmum* or *Supremum Concilium*, to which jointly with the King's letters and petitions, clearly compose the great men of the Regency: William Marshall the Rector Regis *et regnis et regni*, Gerato the Legate, Peter Des Roches the Justiciar Chancellor, Vice-Chancellor and Treasurer."

Id., 266, § 230.

"From the accession of Henry III. a Council comes into prominence which seems to contain the whole judicial staff."

Id., 267.

"In the eighth year of Edward I. it was ordered that all petitions should be examined by the Judges of the Court to which the matters in question properly belonged. 273, VII., and note *Ryley's Pl., p.* 442."

"In the early years of Edward I. the Parliament had acted as a Supreme Court of Justice."

Stubbs' Hist., Vol. II., p. 249.

"And as a High Court of Justice heard the complaints of the King against individuals, and where a case was brought against the King himself, it must begin with a petition of right and not as between subjects, with a writ; and the lawyers recognized the King's Court as one of those powers which are above the King himself."

Vide p. 256, *Vol. II., Ryley's Pl.* (A. D. 1223.)

And it appeareth that—

"Because the gentlemen who come to the King's Parliament are often delayed and subjected to great grievances, because of the multitude of petitions before the King, which can be expedited by the Chancellor and Justices, it is provided that all the petitions which concern the (*sel*) come first before the Chancellor, and those which touch the Exchequer come before the Exchequer, and those which concern the land come before the Justices, and no petition can come

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Ed. 1., *Ryley's Pl.*, 442.
III. Stubbs, p. 274, *Ch. XV.*, cited.

The judicial power of the United States shall extend to all cases in law and equity arising under the Constitution, the laws of the United States and between citizens of different States.

Const., *Art.* 3, *Sect.* 2.

Mr. Chief-Justice Jay, in the case of *Chisholm* v. *Georgia, 2 Dall.*, 419, said :

> "The judicial power of the United States shall extend to all cases arising under this Constitution because the meaning, construction and operation of a compact ought always to be ascertained by all the parties not by authority derived from only one of them; and even a cursory view of the judicial powers of the United States leaves the mind strongly impressed with the importance of them to the preservation of the tranquility, the equal sovereignty and the equal rights of the people."

In this case there are parties to come into Court who can be reached by its process, whose rights admit of ultimate decision by a tribunal to which they are bound to submit, and the question to be acted upon is capable of final determination in the judicial department without the revision of the Executive or the Legislature (*vide Curtis on Const., p.* 96, *meaning of "case"*):

> "And the subject is submitted by a party who asserts his rights in the forms prescribed by law, and is a case in law or equity arising under the Constitution and laws of the United States to which the judicial power extends, because its correct decision depends on the construction of the Constitution as well as a law of the United States."

> "The judicial power shall extend to all cases in law and equity arising under the laws of the United States"; and Chief-Justice Marshall said: "This clause gives the judicial department jurisdiction to the full extent of the Constitution and laws of the United States when the subject is submitted to it by a party who asserts his rights in the forms prescribed by law. It then becomes a case and the Constitution declares that the judicial power shall extend to all cases arising under the Gonstitution or laws of the United States" (*Osborn* v. *The U. S. Bk.*, 9 *Wh.*, 738, 819).

> "A case in law or equity consists in the right of one party as well as of the other, and may be truly said to arise under the Constitution or a law of the United States whenever its correct decision depends on the construction of either (Ch.-J., Marshall, *Cohen v. Virginia*, 6 *Wh.*, 264, 379).

Congress shall make no law prohibiting or abridging the right of the people to petition the Government for a redress of grievances.

Article 1; *Amend. to Const.*

The Supreme Court has power to issue all writs not specially provided for by statute which may be necessary for its jurisdiction agreeably to the usages and principles of law.

U. S. Rev. Stat., Sec. 916, *page* 138.

And the Courts are in duty bound to bring every law to the test of the Constitution.

1 *Kent's Commentaries*, 449.

And it is provided by statute (*West* 2, 13 *Edw.*) that—

> "Whensoever from thenceforth in one case a Writ shall be found in the Chancery, and a like case requiring like remedy no precedent of a writ can be found, a Writ shall be framed by consent of the learned in the law lest it happen for the future that the Court of our Lord of the King be deficient in denying Justice to the Suitors."
>
> *Black. Com., Vol.* 3, *p.* 51.

And your petitioner further saith that he hath asked this Court for a writ that will give him *redress*, and that he submits herewith divers cases upon the laws and writs in the nature of a *quo warranto*, and concerning the nature of a writ, in the event this Court should consider its merits as a remedy.

Information for a writ in the nature of a *quo warranto* must be distinguished from an information for a writ of *quo warranto*.

The first is a civil action at the instance of a private individual against individuals in office for exercising illegal powers and issued with leave of the Court.

The second is at the instance of the Government and at the instance of the Attorney-General for the Government to obtain possession of an office, and is a *quasi* criminal proceeding, and issues without leave of the Court.

The writ of *quo warranto* or *quo jure* lay at the common law.

This writ at common law, by which a man might be called upon to show his title, enables a litigious person to disturb the peace at his pleasure.

Roberts' British Statutes, p. 390.

The *quo warranto* at common law was an original writ out of Chancery (Tancred on Quo. W., p. 2) returnable to the Queen's Bench and other Courts at Westminster (see Tancred at p. 3).

To prevent vexatious Informations the statute of 4 and 5 W. & M., Ch. 18, prohibits the filing of informations without express directions of the King's Bench, which Act extends to all informations except those exhibited in the name of the King by the Attorney-General.

It is held to extend an information in the nature of a *quo warranto*.

Ld. Raym, 426.
Salkeld, 376.
3 *Bac. Ab.*, 171.

"By the Statute of 9 *Anne, C.* 20, 1710, the ancient writ of *quo warranto*, which by means of divers rules and statutes was limited to a writ of right by the King, was revived, and said statute permits an information in the nature of a *quo warranto* to be brought, with leave of the Court, at the request of any person desiring to prosecute the same who is there styled the 'Relator.'"

1 *Bl. Com.*, 203.

"The *Statute of Anne, Chap. XX., A. D.* 1710, was calculated only against individuals usurping franchises, and not against any corporation as such.

And in a late case the Court discharged a rule for questioning an information for exercising the office of bailiff in a borough, although not a corporate office, since the information was founded on the common law."

Rex. v. *Highmen*, 5 *B. & A.*, 771.

"There is no instance of an information in the nature of *quo warranto* at the relation of a private prosecutor being brought against a corporation as such. These can only be brought in the name of the Attorney-General on behalf of the Crown.

Roberts' British Statutes, 338.
2 *Barb.*, 809.

But the writ in the nature of *quo warranto* cannot issue at the instance of a private citizen without leave of the Court to file the information.

It is true that as a general rule the Attorney-General in the several States is by statute the proper attorney to bring the information for a *quo warranto;* but the practice of this Court is the practice of the English Courts, wherein it appears that in these cases any other solicitor might act as attorney until the promulgation of the rule made to give the costs to the clerks in the office of the King's attorney, except in cases affecting corporations and the King's personal rights; and there is no reason why the Court should follow a rule of the King's Bench adopted for reasons having no existence here. The Attorney-General for the Crown had rights to defend and a client to represent.

The cases of *Wallace* v. *Anderson*, 5 *Wheaton*, 291; *Territory* v. *Lockwood*, 3 *Wall.*, 236, are not in point.

In both cases the writ was against the office or for the possession thereof. Anything in the language of these decisions to the effect that in *all* cases the Government attorney must make the information is *obiter dictum* and not binding authority.

The note under the title "Informations" (Bacon's Abr., 172), is as follows:

> "I have handled the particular persons which exhibit suits in this Court; it remaineth that I should in the next place treat of the King's ordinary suits which are of two sorts—either by his attorney informing of himself or by other men's relation, the one being in criminal causes, the other in civil. For the King's attorney I have known it much questioned whether any other of the King's council may not inform for the King as well as the Attorney-General; and it is true that in 8 *Hen.* 8 it is ordered that the King's solicitor should not prosecute * * * till it was otherwise ordered by the council—and in the same term the solicitor was commanded to sue out process against some which acquitted one Blaze of a tax. So that it seemeth that others of the King's council did prosecute causes for the King as well as the King's attorney. But surely it was a great inconvenience when the King's attorney denied any man to inform for the King and enforce them to repair unto himself which, if it should have allowance, would be a means to smother many offences in the Kingdom which by information come to light. But in the 1 & 2 *Jac.* it was resolved that it belonged to the Attorney-General because that the King's causes are of great weight and in

all other cases the defendents pay the plaintiff his costs and the Lord Keeper Edgerton *Hil.* 44 *Eliz.* made an order that the defendants in the King's suit which was sealed should always pay costs to satisfy the clerks which were for the King, all their duties and fees."

And in *quo warranto* cases against corporations the King was entitled to a fine. (*Vide.*)

Any burgess is a competent relator in a *quo warranto* against a party exercising the office of Town Clerk though the right of electing to that office be in a select body.

Rex. v. *Dans.* 1 *M. & R.*, 558.

An inhabitant of a borough may be a relator in an application for an information in the nature of a *quo warranto* against a Town Councillor though he is not a burgess.

Reg. v. *Quale,* 11 *Ad. & E.*, 508.
8 *Tan.*, 286.

A burgess of a corporation is entitled to a writ of *quo warranto,* although the effect of the information would be to dissolve the corporation.

Reg. v. *Terry,* 2 *No. & P.*, 414.
6 *Ad. & E.*, 810.
W., W. & D., 703.

His interest is sufficient if he be subject to the Government of the Councillors as an inhabitant.

Also a *quo warranto* is in the nature of a writ for the King against him who usurps or claims any franchises or liberties, to require by what authority he supports that right.

Bl. Com., Vol. 3, *p.* 262.
2 *Inst.,* 282.

Informations in the nature of *quo warranto* at the instance of a private relator must be against individuals for usurpation and not against the office ; if against the office the writ must issue at the instigation of the Attorney-General.

The Statute of New Jersey, *Rev. Laws,* 206, which has substantially the provisions of the statute of 9 *Anne, Ch.* 20, should be construed in the same manner. Individuals may be permitted to prosecute for usurpation of an office in a corporation but may not file even with leave of the Court a writ to dissolve a corporation.

State v. *Talisman & Hunting.*
Turnpike Co., 1 *Zabr., p.* 9.
N. J. Supreme Court, 1847.

It is also granted, as a corrective of the misuser or non-user, and commanded the respondent to show by what right "*quo warranto*" he exercised the right.

The writ has been granted against persons for exercising the office of Commissioners of a Paving Act—to whom a power was given of imposing rates and taxes—for that was a power greater than the law could give.

Rex. v. *Badcock,* 6 *East,* 356.

By the State Code of Louisiana a writ of *quo warranto* is used in that State as an order, of which the object is to prevent usurpation.

A *quo warranto* will lie for usurping an office, provided the office is of a public nature.

Dusby v. *Asq.*, 12 *C. & T.*, 320.

It lies where there is a body *de facto*, but where, from a defect in their constitution, they cannot legally exercise the powers they profess to use.

Rex. v. *Parsons*, 2 *T. R.*, 244.

The case of *Hinkley* v. *Eaton et al., Commrs., under the Civil Service Act*, in the U. S. Circuit Court for the Southern District of New York, before *Wallace*, J., came before the Court at a term thereof, in September, 1885, upon an information in form, in substance a petition of right, and an order issued therein for the defendants, the Commissioners, to show cause why a writ, in the nature of a *quo warranto*, should not issue, in conformity with the practice in such case.

The information also asked for such writ as the Court might direct.

The information was presented as a petition of right on the hearing, and also independently after the dismissal of the order, and the Court declined to hear or consider the petition.

In that case the District Attorney of Southern New York appeared with an autograph letter from the President, who was an unbidden guest of the Court, to oppose the proceedings of the relator, and claimed the exclusive right to appear for the relator, and insisted, as his points in the case will show:

> "That the proceedings were for ousting the Commissioners from their offices."
>
> "That the suit was in fact a *quo warranto* suit."

> "A writ in the nature of a *quo warranto*, or such other writ as the Court might direct to give redress"

to be a *quo warranto* proceeding, and insisted that the Attorney-General had:

> "The right to appear because the United States were interested."

That proceeding being brought, however, in behalf of a citizen against individuals, the United States had therefore no concern or interest in the controversy, within the meaning of the statute.

U. S. R. S., Sections 359, 771.

Moreover, the petitioner appeared in person as his own attorney, and the information was not in the name of or in behalf of the United States in the body of the information or petition; but the order to show cause was entitled "The United States of America *ex relatione* of" the petitioner therein.

The learned counsel claimed that a citizen, by a petition of right to vindicate his reserved civil rights—not delegated by any provision of the Constitution, because of a violation thereof by individuals, which violation could not have occurred had the Executive discharged its duty—must—

> "Apply to the Executive to bring the suit; that the law vests the discretion to bring the suit or not in the Attorney-General or President; that it would be usurpation the part of the Court to exercise a discretion and because they believe the law to be valid and because the responsibility being vested in them to determine whether a suit should be brought to test it or not; they cannot countenance a suit."

And this was said by an attorney of the Government—claiming to represent the Executive, with its powers of promotion; and the Legislative Department, with its powers of impeachment!

[He averred, however, that he was free from any doubt "as to the Court's capacity to deal with the question sought to be presented and arrive at a just conclusion concerning it."]

This is the resurrection of the old doctrine that the King can do no wrong, which does not prevail in a Republic where the chief officer is a servant accountable to his master, the citizen.

And even under a monarchy the petition of right is a remedy to restrain the King in the exercise of his powers within constitutional limits.

In this case, the Executive Department claimed the right to exercise highly judicial and discretionary powers to deny to the citizen his remedy by the petition of right.

> "The King, saith Fleta, has in the government of his people a superior in the law which made him King, and a superior in his Court."
>
> *Allen on the Prerogative, p.* 97.

"And in the matter of his administration he was liable to the same control."

P. 98.

The counsel cited *Ch.-Justice Marshall* in *Cohen* v. *Virginia*, 6 *Wh., p.* 405—a criminal case—to show that there must be a case before the Court before it could declare a law unconstitutional.

The case is distinguished from the case of *Cohen* v. *Virginia* in this: That this is a case; the active exercise of illegal powers infringing and trespassing on the rights of a citizen makes a case. The proceeding is not against the law, but againt the defendants for exercising illegal powers.

In a case where an illegal body is enforcing and exercising illegal powers executive, legislative and judicial and trespassing hourly upon the sovereignty of the citizen, which powers are greater than the Government can delegate, the learned counsel for the Executive insisted that there was neither case nor grievance before the Court.

And the counsel cited *Darley* v. *The Queen*, 12 *Cl. & F.*, 520, to show:

The right to bring suit in the nature of a *quo warranto* was recognized at common law.

And cited 14 *Wall.*, 441, to show:

> "The general public is left to the protection of the Government and its officers."

And also *Commonwealth* v. *Burrell*, 7 *Penn.*, 34.

In this case of *quo warranto* proper the Judge says:

> "The Commonwealth has her own officers for the protection of her own rights."

And *Rush* v. *Cavaneaugh*, 2 *Barr*, 189, wherein the Court said:

> "It is the legal presumption that the law officer will do his duty. If the presumption is false it was the business of the Convention" to amend the Constitution.

These decisions in the cases of *quo warranto* do not conflict with the common law right to bring a suit in the nature of a *quo warranto;* and the U. S. Constitution doth preserve the petition of right where the law is too defective to reach in the ordinary course.

And the Attorney-General claimed the right to adjudicate, and insisted:

> "That if an individual can bring a suit it may be brought at the bidding of the most despicable man in the community."

And that:

> "If a *prima facie* case were suggested the Court would be bound to allow the writ without regard to the respectability of the relator."

And your petition saith, that under a republican goverment where a citizen hath equal civil rights his respectability doth not increase or impair his rights, nor doth the Constitution make the Executive the judicial tribunal to judge of the limitations of its own constitutional powers; nor has that department any warrant in the Constitution to deprive the citizen of his remedy or redress for an infringement of his liberties. Moreover, it is a fundamental principle of law and justice that wherever there is a right there is a remedy.

The counsel for the Executive also said:

> "It is absurd to suppose that Congress cannot provide a means for ascertaining who are qualified to perform the duties of an office, and that it cannot prohibit the appointing power from appointing persons to office who are not found, by means which it provides, to be qualified to discharge the duties of the office."

And the counsel for the Executive further said :

> "The purpose and object of the Civil Service law i to prescribe qualifications for office and provide such other means for ascertaining these qualifications. Its enactment was not an exercise of the power to appoint to office, but the power to fix qualifications which appointees of office must possess."

The Executive claims in effect that the discretionary power and duty of nomination can be surrendered to the creatures of the Legislative Department, notwithstanding the constitutional provision that the President or the heads of departments shall nominate and appoint.

And the counsel for the Executive quotes

U. S. v. *Maurice, 2 Brock,* 96.

to prove that the Executive can create offices in case of legislative omission. It is difficult to see wherein this case is pertinent, but the counsel inferred from it that :

> "The power to create an office is vested in Congress and carries with it the necessary power to prescribe the necessary qualifications for office."

And follows it up with the proposition that :

> "Congress under the Constitution may make all laws which may be necessary and proper to carry its powers into effect and may determine the means to carry the law into effect."

And it appears that the learned counsel hath advised the chief officer of the Executive Departments of the Republic and the heads thereof that the Legislative Department can nominate, that the Executive can only appoint, and that, after the Legislative Department hath created an office, the Executive or appointing power hath not discretion or capacity to fulfill the requirements "to nominate and appoint."

And the learned counsel of the Attorney-General, Mr. Eaton, who was one of the Commissioners, in his published argument speaks of :

> "The authority which Congress intended should be regarded as delegated from itself to the President."

And of the rules being :

"The joint product of the wisdom of two Presidents of opposite parties and all the heads of departments" ! ! ! ! ! !

Ignorantia legis neminem excusat.

Neither the clause of the Constitution giving Congress power "to provide for the general welfare" nor the provision giving Congress power "to make all laws which shall be necessary and proper for carrying the execution of the powers thereof into effect" can by any honest construction justify the Act to establish an order with exclusive privileges of appointments to offices of trust, honor and profit under the Government ; limit the power of the Executive Department to nominate and appoint ; confuse the constitutional powers of the Government which are separate and distinct ; nor limit or qualify the sovereignty or trespass upon the reserved liberties of the people.

> "Under our form of government the Legislature is not supreme. It is only one of the organs of that absolute sovereignty which resides in the whole body of the people. Like other departments of the Government, it can only exercise such powers as have been delegated to it ; * * * beyond that boundary its acts

> * * * are utterly void. * * * It is admitted that the two houses * * * possess all the legislative power of this State. * * * In Wilkinson *v.* Leland, 2 Peters, 657, Mr. Justice Story says: 'No court * * * would be warranted in assuming that the power to violate and disregard (rights of personal liberty and private property) lurked under any general grant of legislative authority.'" And further, "No member of the State shallbe deprived of any of his rights or privileges, (without) upon trial had according to the course of the common law. * * * It cannot be done by mere legislation,"
>
> *Taylor* v. *Porter,* 4 *Hill,* 140.

Such a construction will in effect determine that the legislative department is unfettered by any constitutional limitation and that the Government is an absolute despotism in fact, and a Republic in form; and if any decision of the Courts in any case can be found wherein the Courts have been misled or inveigled by the ingenuity of the lawyers, justifying that construction, it should be reversed or disregarded.

And your petitioner further saith, that by virtue of his sovereignty as a citizen standing on his constitutional rights, as well as the rights not delegated, but reserved, to the States or the people in the Constitution, he hath a better standing than a subject of an absolue Government, and that by virtue of his sovereignty he hath the right to call the public servants to account in the Courts for exceeding the limitations of their powers. And that no department that hath the right to be a law unto itself, to deny its accountability, to judge of its own powers, to oppress the citizen or deprive him of his remedy or redress, nor to appoint an attorney to act in his behalf to surrender and betray him in a Court of Justice in a proceeding to vindicate his sovereignty; neither has it the right to limit and deny the exalted mission of this Court to determine the limitations and powers of the co-ordinate departments of the Republic, and vindicate the liberties of an American citizen which it was designed to defend.

And your petitioner saith, that the law as expounded by the Executive Department defeats the purpose for which the petition of right is devised, in the case of the trespass on the rights of a citizen by the Executive Department. And

That the first amendment of the Constitution provides that Congress shall make no law to abridge the right of the people to petition the Government for a redress of grievances; and next in order that the right to bear arms shall not be infringed.

And your petitioner saith, that the maxim of the common and British constitutional law, that wherever there is a right there shall be a peaceful and legal remedy to redress an infringement of that right, and in case the law is too defective, that any individual has the right to petition the Government for redress, and that the Government must give that redress; is the constitutional law of the United States.

The wisdom of submiting a question of civil or political right to a passionless and wise tribunal to avert strife is too palpable to need argument or debate.

And your petitioner further saith, that the Civil Service Act is upheld, and the regulators who enforce it are aided and abetted, by an active body of partisans and holders of office under the State and National Governments, banded together with like aims, without principle or plan for the welfare of the people, ignorant of the principles of government or the limitations of constitutional power, acting in concert with the sole intent of seizing and wresting political powers from the people and from their constitutional agents, to retain in office, by life tenures, members of the limited order of place-holders created by the Act, usurping power, and, without warrant from the people, to nominate exclusively certified subjects from this privileged order to offices under the Government made vacant by the angel of death.

Saith *Washington* in his farewell address to his countrymen :

> "You should resist with care the spirit of innovation upon the principles of the Government, however specious the pretense. One method of assault may to effect in the forms of the Constitution alterations, and thus to undermine that which cannot directly be overthrown. In a free country caution should inspire those entrusted with its administration to confine themselves within their respective spheres, avoiding in the exercise of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of Government, a despotism. The necessity of reciprocal checks in the exercise of political power, and constituting each the guardian of public weal against invasion by the others, has been evinced by experience, ancient and modern."

And your petitioner further saith, that if the Legislative Department encroacheth upon the sovereignty of the executive and the executive doth surrender to encroach on the sovereignty of a citizen and the judiciary doth abdicate its sovereignty by denying its power to give redress, the sovereignty or political power of the executive, of the judiciary, of the States—already shattered—as well as the sovereignty of the citizen, will fall into the Legislative Department, and these distinct sovereignties under the Constitution be welded in one solid body unfettered and unchecked by constitutional limitations and the liberty of the people will be at its mercy.

That all constitutional provisions limiting the powers of Government will be nullified under color of the articles of the Constitution authorizing Congress—

> "To provide for the general welfare and to pass necessary Acts to carry them into effect."

And it will come to pass that laws will be enacted limiting the people of their power at the ballot box.

The spirit of this Act distrusts and limits the powers and capacities of the people, of the members of the Senate, and of the House of Representatives, of the Judiciary; and assumes that the executive, legislative and judicial departments, which the Constitution formed, are unequal to the task of executing their offices and powers, and that the people are incapable of self-government, and that republican institutions have failed.

The Commissioners may, and under the principles of the Civil Service Act would, hold their offices for life, controlling the nomination of the body of the executive appointees, who will hold their offices free from the control of the people, through the Executive, because the hand of the President is paralyzed by its provisions. Controlling an active body of men in all the principle cities and political centres of the Union, using active supervision over all the departments and hatching out new broods of office holders and office seekers, graded and certified at will, disregarding all constitutional powers, acting in concert with a similar body, with like ends, powers and purposes in the departments of the State Governments—this body, with its powers, will control the elections, destroy the checks and balances and constitutional divisions in the States as well as in the National Constitution, and establish a centralized, consolidated government without constitutional limitations and political divisions; which will be fatal to the liberties, rights, privileges and immunities and reserved rights of the States and people.

The powers exercised by these Commissioners are unwarranted either by the letter or spirit of the Constitution, and are repugnant to reason and common sense, and are unconstitutional in the English sense of the word, and would be so held where the Crown is sovereign, and Parliament omnipotent.

> "Civil liberty is most perfect where social rights are protected and secured; where civil rights are equal, extensive and established on the basis of the Constitution; where the political rights of public functionaries are defined and limited by the Constitution, and where the political rights of the State or Nation itself are perfect and unlimited."
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> *II. Tucker's Bl., page* 145—*Notes.*

And your petitioner asks for an order or judgment, restraining, enjoining and prohibiting the Commissioners, and any and all persons, from exercising the illegal and unconstitutional powers hereinbefore set forth, and for such other and further redress as the Court shall deem meet, to vindicate the liberties of the petitioner, and which will adjudge, determine and declare that the people of the United States are not subjects but sovereign citizens, and that the Government is in substance as well as in form a Republic.